

# **Policy Review: Equality and Human Rights**

## **Working Paper 2**

### **Introduction**

This paper presents an overview of the main human rights and equality instruments that apply to the UK. There have been significant developments in recent years in UK policy and legislation on equality and human rights. In addition to Britain's involvement with a range of European and international policy instruments, a series of changes to domestic policy and judicial arrangements have significantly altered the homeland policy landscape in the last decade. In response to these changes, the UK government recently established an Equality and Human Rights Commission, charged with the promotion and enforcement of equality and human rights.

Both through domestic and foreign judiciaries, the UK is bound by a range of international and national human rights instruments. These instruments include various UN Conventions, the EU Charter of Fundamental Rights, as well as the European Convention on Human Rights which was given further force in the UK context by the UK Human Rights Act 1998. In addition, a series of domestic laws have been passed and amended since the 1970s to ensure equality and protection from discrimination in relation to specific sections of society. This review examines the origins, underlying principles and implications of the most significant of these instruments.

The review briefly traces the historical contours of this international policy landscape, assessing its role in shaping UK policy, and examining the main developments in UK equality legislation up to and including the most recent Equality and Human Rights Act 2006. The paper begins with the European context, starting with the formation of the Council of Europe and the influential Convention on Human Rights it devised, and then moves onto domestic policies. The final sections briefly examine the Scottish policy context, the implications of a devolved legislature, and the particular provisions of the Scotland Act. The review concludes by discussing the findings of a comparative study of anti-discrimination law across Europe.

### **The Council of Europe**

The Council of Europe is an important starting point for this review since it was the body responsible for developing the European Convention on Human Rights and the European Court of Human Rights (ECHR), which have exercised an important influence on the legislature of member countries. Indeed, before the UK passed its own Human Rights Act in 1998, all UK Human Rights cases were examined at this European level.

The Convention was the basis of two important directives issued by the European Union in 2000: the Racial Equality Directive and the Employment Equality Directive. The directives were also made possible by Article 13 of the Treaty of Amsterdam, which gave the EU powers to insist that member states produce anti-discrimination legislation. These

directives required that the 25 EU member states ensure their equality legislation was updated to incorporate the following specific grounds of discrimination: race and ethnic origin, religion and belief, age, disability and sexual orientation (in addition to this the Equality and Human Rights Act 2006 lists gender).

Europe's oldest political organisation, the Council of Europe was founded in 1949, following the Treaty of London. It comprises 47 member countries, 1 applicant country (Belarus) and five countries with 'observer status': the Holy See, the U.S., Canada, Japan and Mexico. Following the ravages of two world wars, the Council was created as a mechanism for defending human rights, democracy and the rule of law across Europe. Beyond this, it also aims to foster a common European identity as well as democratic stability in Europe by backing political, legislative and constitutional reform. The Council Members are listed in the following table.

05.05.1949	<b>Belgium</b>	06.11.1990	<b>Hungary</b>
	<b>Denmark</b>	26.11.1991	<b>Poland</b>
	<b>France</b>	07.05.1992	<b>Bulgaria</b>
	<b>Ireland</b>	14.05.1993	<b>Estonia</b>
	<b>Italy</b>		<b>Lithuania</b>
	<b>Luxembourg</b>	30.06.1993	<b>Slovenia</b>
	<b>Netherlands</b>		<b>Czech Republic</b>
	Norway	07.10.1993	<b>Slovakia</b>
<b>Sweden</b>	<b>Romania</b>		
09.08.1949	<b>United Kingdom</b>	10.11.1994	Andorra
	<b>Greece</b>	13.07.1995	Albania
Turkey	Moldova		
07.03.1950	Iceland	10.02.1995	<b>Latvia</b>
13.07.1950	<b>Germany</b>	09.11.1995	Former Yugoslav Republic
16.04.1956	<b>Austria</b>		of Macedonia
24.05.1961	<b>Cyprus</b>	28.02.1996	Ukraine
			Russian Federation
03.05.1963	Switzerland	06.11.1996	Croatia
29.04.1965	<b>Malta</b>	27.04.1996	Georgia
22.09.1976	<b>Portugal</b>	25.01.2001	Armenia
24.11.1977	<b>Spain</b>		Azerbaijan
23.11.1978	Liechtenstein	24.04.2002	Bosnia & Herzegovina
16.11.1988	San Marino	03.01.2003	Serbia
05.05.1989	<b>Finland</b>	05.10.2004	Monaco

As shown in the table, the UK was among the ten original signatories to the Council in 1949. Greece and Turkey followed later in the same year. The 1990s are marked by the accession of formerly Communist nations following the break up of the Soviet Union. The countries in bold type are also members of the European Union. There are two

countries considered to be part of Europe by the European Union, but who are not yet members of the Council of Europe: Belarus and Montenegro. These two countries have applied to join the council and the process is ongoing. Belarus' applicant status is currently suspended because of its poor human rights record.

## **The European Convention on Human Rights**

### ***Origins of the Treaty***

To use its full title, the 'Convention for the Protection of Human Rights and Fundamental Freedoms' is the treaty by which the member states of the Council of Europe undertake to respect fundamental freedoms and rights. It was strongly influenced by the aspirational principles underlying the Universal Declaration of Human Rights, published by the General Assembly of the United Nations in December 1948.

The Convention was signed by the 12 Council members in 1950, and came into force in 1953. The UK was among the first signatories to the Convention, which had been drafted substantially by Sir David Maxwell-Fyfe. It was the first international legal instrument that sought to safeguard the rights and freedoms of its people, and has in turn influenced other nations' approaches to human rights, notably the U.S.

Two independent bodies were commissioned to oversee the enforcement of the Convention: the European Commission of Human Rights (1954) and the European Court of Human Rights (1959). This two-tier system was replaced in 1998 by the new European Court of Human Rights, as agreed at the Vienna Summit of 1993.

In 1999, the first Commissioner for Human Rights was appointed, charged with responsibility for promoting awareness of the Convention and its key messages.

### ***Composition of the Treaty***

The Treaty is divided into three main sections, each comprising a number of Articles. Section 1 'Rights and Freedoms' contains 17 Articles, each one pertaining to a distinct civil or political right. It is this section that specifies the core human rights that are commonly referred to as 'the Convention'. Section 2 contains a further 33 Articles pertaining to the creation of a European Court of Human Rights, while Section 3 contains 8 Articles listing 'Miscellaneous Provisions'.

A number of additions have been made since the drafting of the original Convention in 1950. These take the form of a series of Protocols, containing further Articles specifying additional rights and how they should be protected.

The whole Treaty is prefaced by Article 1 that frames the Convention by charging High Contracting Parties (i.e. signatory countries) with the 'Obligation to Respect Human Rights' for all those within their jurisdiction.

### ***The Rights it Guarantees – absolute, limited and qualified rights***

Not all the Convention rights are formulated in the same way. They can be divided into three main types: *absolute*, *limited* and *qualified*. As the name suggests, the first type are inalienable and unbreachable. They include the right to life (Article 2), to protection from torture or inhuman and degrading treatment (Article 3), and from slavery (Article 4), as well as protection against retrospective criminal penalties (Article 7). *Limited* rights like the right to liberty (Article 5) are subject to explicit and finite limitations based on exceptional circumstances. The exceptions are set out in the ECHR. Finally, among the *qualified* rights are the right to respect for: private and family life (Article 8), religion and belief (Article 9), freedom of expression (Article 10), and assembly and association (Article 11). Interference with such rights is only permissible if it is: a) based in law, b) done to secure a permissible aim as specified in the Convention (for example protecting the public order), or c) a proportionate and democratic action which is necessary to fulfil a social need or pursue a legitimate aim.

The ‘Rights and Freedoms’ set out in the Convention comprise a set of prohibitions and permissions in a range of areas. These are:

- Article 2 – Right to life
- Article 3 – Prohibition of torture
- Article 4 – Prohibition of slavery and forced labour
- Article 5 – Right to liberty and security
- Article 6 – Right to a fair trial
- Article 7 – No punishment without law
- Article 8 – Right to respect for private and family life
- Article 9 – Freedom of thought, conscience and religion
- Article 10 – Freedom of expression
- Article 11 – Freedom of assembly
- Article 12 – Right to marry
- Article 13 – Right to an effective remedy\*
- Article 14 – Prohibition of discrimination
- Article 15 – Derogation in time of emergency\*
- Article 16 – Restrictions on political activity of aliens\*
- Article 17 – Prohibition of abuse of rights
- Article 18 – Limitation on use of restrictions on rights\*

\*Explanatory notes:

Article 13: states that anyone whose Convention rights are violated shall have the right to an effective remedy before a national authority, even when the violation was committed by a person acting in an official capacity.

Article 15: makes it possible for a signatory country to suspend its obligations under the Convention during a time of war or other public (and life-threatening) emergency. Such suspension will be strictly limited to the exigencies of the situation and provided that it

does not contravene other obligations under international law. Moreover, the suspension does not apply to Articles 2, 3, 4, and 7. The Council of Europe must be consulted fully where a state chooses to make use of this right of derogation.

Article 16: states that articles 10, 11 and 14 should not prevent signatory states from imposing restrictions on the political activity of aliens.

Article 18: limits the restrictions it is possible to place on rights and freedoms to those circumstances stipulated in the Convention.

### ***The Protocols***

There are six Protocols (numbered 1, 4, 6, 7, 12, and 13), which have been added to the Convention at different times since its inception in 1950. The first Protocol, issued in Paris in 1952, stipulates further rights to own private property, receive education, and participate in free elections. The remaining Protocols outline prohibitions and protections in relation to freedom of movement, discrimination, the expulsion of nationals and of aliens, and rights relating to criminal procedures (including the right to appeal, compensation for wrongful conviction, and ‘double jeopardy’). The most recent Protocol, signed in Vilnius in 2002 extends the Convention’s abolition of the death penalty to apply in all circumstances, including wartime.

### ***Application in UK law***

Although the UK was one of the first signatories to the Convention it has not in fact signed up to all parts of the treaty. All but two of the Articles listed in Section 1 of the Convention are included in the UK Human Rights Act (and are thus enforceable by the national judiciary). The exceptions are Articles 13 and 15, covering violations of rights by persons acting in an official capacity, and the derogation of states’ obligations under the Convention during a time of emergency. The UK has also signed up to the First Protocol covering private property, education and free elections, and the Thirteenth Protocol (superseding the sixth Protocol) abolishing the death penalty.

### **The European Court of Human Rights (ECHR)**

Based in Strasbourg, this is the only truly judicial organ established by the European Convention on Human Rights. The court is designed to ensure that contracting states observe their obligations under the Convention and is comprised of one judge for each member state.

From 1965 individual British citizens were granted rights of access to the ECHR where they felt their Convention rights had been breached. However, both the time and expense involved in this process meant that only the most serious cases could be heard in Strasbourg. Upon election in 1997, the British government therefore published the White Paper *Bringing Rights Home*, leading to the 1998 Human Rights Act. This Act places the European Convention of Human Rights in the context of a homeland judiciary,

effectively making the Convention enforceable in British courts. The Human Rights Act came into force in the UK in 2000. Details of the Act, its relationship with the European Convention on Human Rights, and some of its implications for a now devolved British legislature are examined in the next section.

### **The Human Rights Act 1998**

Introduced in 1998, the UK Human Rights Act (HRA) developed out of the European Convention on Human Rights. Although a piece of UK legislation, its purpose is essentially to protect and strengthen equality instruments developed in Europe. In its own terms, it is:

‘An Act to give further effect to rights and freedoms guaranteed under the European Convention on Human Rights; to make provision with respect to holders of certain judicial offices who become judges of the European Court of Human Rights; and for connected purposes.’ (Human Rights Act, 1998, Chp 42)

There are two main ways in which the HRA achieves its stated goals:

- It places a requirement on UK courts that as far as possible they should interpret the law in a way that is compatible with Convention rights.
- It places an obligation on public authorities to act compatibly with Convention rights.

This latter principle applies also to other organisations in circumstances where they are acting for or on behalf of public authorities. For example, where a private security firm is contracted by the Prison Service it effectively becomes a public authority while carrying out the contracted services.

The HRA also gives people the right to take court proceedings if they think that their Convention rights have been breached or are going to be. The HRA will exert an important influence on the operations of the UK legislature, and will likely shape the development of future laws in certain areas. For example, Article 14 is particularly pertinent to the 2006 Equality Act. This article prohibits discrimination on ‘any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status’.

### ***The Rights it Guarantees***

The HRA incorporates the rights in Articles 2 to 12 and in Article 14 of the Convention, plus those in the First and Sixth Protocols (detailed above). The incorporated rights are set out in the First Schedule to the HRA and are referred to as ‘Convention Rights’. The Sixth Protocol abolishes the death penalty in the UK, which still existed for some extreme cases of treason. However it is written into the HRA that exceptions, for example during wartime, do exist. While the purpose of the Human Rights Act is to give the

Convention rights greater force in a national context, not all the rights are incorporated into British law with the Act. The omissions and their possible implications are discussed below.

### ***Right to Effective Redress***

Article 13 of the Convention rights is omitted from the HRA. This provides the right to effective redress. The government decided not to include this article because it felt that the HRA itself would adequately meet the requirements of this article by giving people the right to take proceedings in the British courts if they considered that their Convention rights had been breached. Article 13 in fact contains the specification that rights to redress should apply 'notwithstanding that the violation has been committed by persons acting in an official capacity'. In other words, no violation of a person's rights should be exempt from redress on grounds that it was committed in the pursuit of official duties. The omission of this article from the HRA may therefore conceivably create greater room for manoeuvre in British law, although the HRA does, of course, place a specific requirement on *public authorities* to act in a way that is compatible with the Convention rights.

### ***Right of Derogation: prevention of terrorism provisions in UK law***

Article 15 is also omitted, which provides for the suspension of certain rights during times of war or public emergency (although excepting Articles 2, 3, 4, and 7). Instead the HRA sets out its own stipulations that are specific to the UK context. This is largely because of the situation in Northern Ireland. The implications of this situation in respect of the UK's obligations under Article 15 of the Convention are explained in a Schedule 3, Part 1 of the HRA. It will be recalled that all signatories to the Convention are required to notify the Secretary General of the Council of Europe if they choose to avail themselves of the right to derogation set out in Article 15. Thus in 1998 the UK government issued a notification of intent in this regard. The notification, included in the HRA 1998, explains the nature of ongoing activities in Northern Ireland, including 'repeated murder, attempted murder, maiming, intimidation and violent civil disturbance and in bombing and fire raising which have resulted in death, injury and widespread destruction of property' (1998 Notification, cited in HRA, 1998, Schedule 3, Part 1). As a result, a state of public emergency as defined in Article 15 of the Convention exists in the UK. For this reason the UK government has, since 1974, introduced a series of legal measures to deal with these activities. They are set out in a number of Prevention of Terrorism Acts. They include, for example, the right to detain terrorism suspects for up to five days without charge. Because of these measures taken in response to the situation in Northern Ireland, UK law may not always be consistent with the obligations imposed by the Convention. The Government has thus 'availed itself of the right of derogation conferred by Article 15(1) of the Convention and will continue to do so until further notice.' (ibid.)

### ***Impact on UK Counter-Terrorism Legislation***

One of the concerns expressed in some quarters in relation to the Human Rights Act was that it would impact negatively on Britain's counter-terrorism legislation. However, by availing itself of the right of derogation, following the precedent of its Notifications in 1988 and 1989 (Human Rights Act, Schedule 3, Part 1), the HRA appears to preserve the counter-terror measures it developed in response to the situation in Northern Ireland. Furthermore, the Terrorism Act 2000 (TA 2000) and the Anti-Terrorism Crime and Security Act 2001 (ATSA 2001) have widened police powers in recent years with respect to terrorism. Indeed, this area of law has seen rapid change over the last decade. Moreover, opposing pressures in relation to civil protections arise from the Convention (and HRA) on the one hand, and high profile cases (Stephen Lawrence) and terrorist incidents (the July '05 bombings in London) on the other.

The impact of the HRA on anti-terrorism legislation was one of the issues examined in the recent Review of the Implementation of the Human Rights Act carried out by the Department for Constitutional Affairs (DCA, 2006). The conclusion it draws is that the Human Rights Act has indeed had an impact on UK government efforts in relation to terrorism, asylum and immigration. In certain cases (for example *A and Others v The Home Secretary*), the detention without trial of terror suspects has been questioned as incompatible with Article 14 of the Convention. However, such impediments arise not from the HRA but the UK's commitment to the European Convention. On balance, the security agencies have reached the conclusion that although there are significant resource implications in servicing the structures set up to deal with dangerous terrorist suspects, these do not result from the Human Rights Act itself but from decisions of the European Court in Strasbourg.

The other area in which human rights legislation potentially conflicts with domestic law relates to the UK's ability to deport or remove (failed) asylum seekers who are considered a security threat. The Review cites the case of *Chahal v United Kingdom* (1996) as an example of where human rights instruments prevent the government from being able to balance individual rights against the protection of the wider community.

Here again, however, the ultimate impediment arises from the UK's obligations under the European Convention of Human Rights rather than the HRA. Furthermore there is scope for the courts to exercise 'discretionary judgement' in relation to policy decisions made by Parliament on matters of national security. The conclusion of the Review is therefore that the UK Human Rights Act does not represent any serious impediment to homeland security policy.

In its response document '*Rebalancing the criminal justice system in favour of the law-abiding majority*', the Home Office (2006) argues that overall the HRA has had a positive impact on the homeland legislature, while acknowledging the need to develop and strengthen policy on criminal justice. Moreover, the government states its intention to challenge specific court judgements on human rights cases (like the Chahal ruling in Strasbourg) where these are seen to impede the government's ability to 'balance' individual rights with public protection. The document also sets out plans to strengthen



existing criminal justice mechanisms to ensure that misunderstandings or excessive caution in relation to the HRA do not jeopardise efforts to protect the public.

The message from both of these documents thus seems to underscore the need for public protection to take precedence over the human rights of individuals regarded as a threat to public safety. Where the Human Rights Act jeopardises this balance of rights, further action will be taken to amend legislation and clarify messages from the HRA.

### ***Impact on Policy Making***

The DCA Review of the HRA concludes that it has had a significant and largely positive impact on UK policy-making processes. There are three main ways in which this impact has been felt:

- by introducing a formal process of ‘**human rights proofing**’ for all Bills, ensuring their compatibility with Convention rights
- through **litigation** which may force a change of policy or of policy delivery
- through a change of **behaviour** in public authorities now required to act in ways compatible with the Convention rights

In general terms, the Review thus considers that the HRA has in fact strengthened the relationship between the citizen and state by imposing a human rights framework on policy-making, thereby ensuring a means of protecting the needs of an increasingly diverse population.

The Act has changed how policy and other decision makers view the Convention rights, because they are now enforceable in UK law. As a consequence, they are explicitly recognised as part of the decision-making process. One result is that this has led to a shift in emphasis in policy away from an inflexible ‘one size fits all’ model, in favour of one that takes into account individual needs and circumstances. On the other hand, the review cites a number of cases that illustrate the potential increase in inefficiency, controversy or misunderstandings in the system that can arise from the shift towards a culture of entitlements that the HRA signals.

### ***Constitutional Implications***

While it brings human rights into a closer relationship with the British legal system, the Human Rights Act has little impact on the constitutional balance between the Judiciary, the Executive and the Parliament. Unlike a separate British ‘Bill of Rights’ (a proposed alternative to the HRA), the HRA protects the sovereignty of the UK Parliament. This means that the elected House of Commons, rather than the judiciary, remains the final arbiter on questions of rights and morality – even where its decisions (Acts of Parliament) are incompatible with the European Convention.

Moreover, the DCA Review concludes that the Human Rights Act has had the positive effect of establishing a closer dialogue between ECHR judges and the British judiciary.

### *Implications of Devolution*

The devolved governance structure in the UK, combined with a distinctive judicial system in Scotland, means that the impact of the HRA will vary to some degree in each of the countries. This differential impact should be particularly noticeable given that the HRA did not come into force until two years after the devolved legislature was established with the Scotland Act (1998). Nevertheless the HRA provides the constitutional framework within which devolution was effected and sets out the Convention rights that are embedded in the Scotland Act, the Government of Wales Act, and the Belfast Agreement and Northern Ireland Act.

Under the initial devolution arrangements the National Assembly of Wales did not have primary legislative powers, although human rights were written into the Government of Wales Act 1998. The Assembly was thus required to Act in ways that are compatible with the European Convention on Human Rights. The Government of Wales Act 2006, which reiterated existing commitments on Human Rights, introduced fundamental reforms to the Welsh Assembly. With effect from May 2007 the Act introduced a separate executive body with legal separation from and accountability to the legislature. Thus a new governance structure for Wales was introduced, comprising the Welsh Assembly Government (the legislature) and the National Assembly for Wales (the executive). The relationship between them mirrors that of the UK government and Parliament respectively. Following these changes the Welsh Assembly Government is awarded new powers to legislate on devolved matters such as education, health, and public services. These powers are, however, subject to the Assembly being granted legislative competence on a particular devolved issue. This is granted on a case-by-case basis by the UK Parliament. In exercising this legislative competence on any issue the Assembly is required to act compatibly with the Convention Rights. Given these new legislative powers over devolved issues, the Assembly must inevitably give fuller consideration than hitherto to the place of human rights in Welsh public and political life.

The Northern Ireland Act 1998 contained a commitment to safeguarding human rights and equality of opportunity. Specifically, a devolved administration is prohibited from acting in a way that contravenes the Convention rights. In addition, in compliance with a commitment made by the UK government at the Belfast (Good Friday) Agreement in 1998, Section 68 of the Act made provision for a Northern Ireland Human Rights Commission. This is an independent public agency – neither an NGO nor a governmental body – and is recognised by the UN as a member of the worldwide network of National Human Rights Institutions. Its role is to promote awareness of the importance of human rights and to advise both the UK Secretary of State and the Executive of the Northern Ireland Assembly. The Commission has the power to conduct investigations, to assist individuals wishing to take cases to court, and to bring court proceedings itself. In addition to its educational and advisory roles, the Commission is specifically charged with compiling a Bill of Rights for Northern Ireland to supplement the European

Convention on Human Rights. Through its Bill of Rights Forum (established in December 2006) it is currently engaged in public consultation on this issue.

According to the provisions of the Scotland Act 1998 the Scottish Parliament must legislate in ways that are compatible with the Convention rights. Importantly, this means that the courts can invalidate Acts of Scottish Parliament where they are incompatible with the Convention rights. By contrast, courts can only make Declarations of Incompatibility in relation to Acts of UK Parliament. The Scotland Act prohibits all members of the Scottish Executive from making subordinate legislation or from committing any other act that is incompatible with the Convention rights. For example, any proposed actions that are incompatible with the UK's international obligations can be prevented by the Secretary of State. In short, while human rights are a reserved matter the activities of the Executive in devolved matters must also be governed by human rights considerations. Since the Scotland Act took effect in May 1999 the Scottish courts have thus examined human rights cases taken against the Executive. Following the UK Human Rights Act, which came into effect in 2000, the most important change for the Scottish judiciary will be the range of individuals and bodies required to abide by and implement human rights. In effect, the Scottish Executive and the Scottish Parliament are no longer the only public authorities bound by the Convention rights.

The idea of a 'public authority' is central to the Human Rights Act, and the legally enforceable protections it brings to UK citizens. It will also be a key issue in implementing and enforcing human rights in the context of the UK's devolved governance structure. One of the most pressing concerns for policy-makers is how this term is defined. In the Human Rights Act the term is in fact only partially defined as including (but not limited to) a court or tribunal and "any person certain of whose functions are of a public nature". The Act is deliberately open-ended in this respect, and it will be left to the courts to determine who or what is a "public authority" and therefore has obligations in relation to human rights. An example that attracted a considerable amount of debate in this regard was the Church of Scotland (and other churches). In so far as it provides formal (primary or secondary) education and performs other public functions it must be regarded for the purposes of the HRA as a 'public authority'.

It is possible to distinguish two broad categories of 'public authority'. Included among the 'pure' public authorities would be all branches of central and local government, the military, customs and police, and the public prosecution service. On the other hand there are 'hybrid' public authorities which perform some public function(s) but may be in no sense agencies of government at any level. There is an important difference between these two types of public authority when it comes to the Human Rights Act. All the activities of a 'pure' public authority (for example the Scottish Executive) must be compatible with the Convention rights. However, 'hybrid' public authorities need only observe the Convention rights when carrying out their public functions. Importantly, this latter type of authority is thus not bound by the Convention rights in regard to its internal organisation. Where private organisations are contracted to carry out public functions they will have to demonstrate their awareness of public authority obligations in respect of human rights.

A further important implication arising from how ‘public authority’ is defined in the HRA relates to the law courts. As public authorities the courts will inevitably be constrained by their own Convention obligations when considering private law disputes. For example granting an interdict to exclude someone from a shared home in cases of domestic dispute may be deemed a breach of that party’s Convention rights (Gane, 2000).

### **Equality Strands in UK Legislation**

The UK has a number of pieces of legislation designed to promote equality and combat specific forms of discrimination. Most notably these instruments address (in)equality issues in relation to gender, race and disability. Much of the legislation offers protections against discrimination in the workplace and other areas of public life. Since the 1970s the most significant pieces of anti-discrimination legislation have been the Equal Pay Act (1970), the Sex Discrimination Act (1975), the Race Relations Act (1976) and the Disability Discrimination Act (1995). The following sections discuss some of the key protections they offer, and the Commissions created to support and promote them. The discussion includes additional protections secured through Amendments or subsequent legislation in other areas (for example laws relating to issues like sexual orientation or religion and belief).

### **The Equal Pay Act 1970, the Sex Discrimination Act 1975 and the Equal Opportunities Commission**

The Equal Pay Act 1970 (EPA) and the Sex Discrimination Act 1975 (SDA) both protect the right to equality on grounds of sex. Each has been amended a number of times since they both came into force in 1975. A separate Sex Discrimination (Northern Ireland) Order was passed in 1976. The EPA guarantees adult men and women equal rights in pay and benefits where they are doing work that is demonstrably the same or equivalent in either content or value. The SDA prohibits discrimination in employment, education, advertising, housing or the provision of goods, services or facilities. It applies to men and women of any age, including children. The SDA applies to England, Wales and Scotland, with dedicated branches of the Equal Opportunities Commission operating in each country.

The purpose of the SDA is to make unlawful sex-based discrimination in specific areas of public life. Victims of such discrimination may take legal action against the perpetrator. The Act also prohibits victimisation of those who try to exercise their rights under the SDA or Equal Pay Act. In addition to protecting individuals from discrimination on grounds of sex, the SDA also prohibits discrimination against married people and, following the Civil Partnership Act 2004 (effective from December 2005), those in a civil partnership. It does not, however, make it unlawful to discriminate against someone because they are single. While discriminatory advertisements are unlawful, only the Equal Opportunities Commission has the power to take legal action against advertisers.

### ***Forms of Sex Discrimination***

The SDA prohibits both direct and indirect sex discrimination. Part 1 of the SDA outlines the various forms of discrimination to which it applies. It includes specific provisions for discrimination on grounds of gender reassignment, pregnancy and maternity and harassment in employment. Direct sex discrimination involves treating a man or woman less favourably because of their sex than a person of the opposite sex would have been in comparable circumstances. The Act also deals with the more complex question of indirect discrimination. This involves the application to both sexes of some requirement, condition or procedure that particularly disadvantages one sex and is not justifiable on objective grounds unrelated to sex. This provision applies in all the fields covered by the SDA. The Sex Discrimination (Gender Reassignment) Regulations 1999 amended the SDA to extend its protections in employment (pay and conditions) and vocational training to include discrimination on grounds of gender reassignment. Harassment on these grounds is also expressly prohibited by the SDA. Disadvantageous treatment of an employee arising from of her pregnancy and/or maternity leave is prohibited by the SDA. In such cases the woman need only prove that she is treated less favourably than other women who are not pregnant or who do not have children, rather than via comparison with male employees. The courts have found that the SDA does not cover discrimination on grounds of sexual orientation, although this is made unlawful in the field of employment under the Employment Equality (Sexual Orientation) Regulations 2003.

The SDA makes specific legal provisions prohibiting harassment in employment, vocational training and further education. It is defined as either:

- unwanted conduct on grounds of the recipient's sex or
- unwanted verbal, non-verbal or physical conduct of a sexual nature

Harassment must either have the purpose or the effect of violating the recipient's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. There is no indication that the perpetrator needs to be in a position of power in relation to the recipient.

### ***Fields Covered by the SDA***

Part 2 of the SDA deals with discrimination in the employment field, including recruitment (except in specified cases where being a particular gender is a necessary and legitimate requirement for the advertised post), treatment at work, and dismissal. The SDA definition of 'employee' is wider than in other areas of the law, extending to those employed on a personal or sub-contracted basis. It also prevents discrimination by: firms against partners, trade unions against members, employment agencies, bodies conferring professional qualifications, vocational training providers, and barristers or advocates.

Part 3 of the SDA also prohibits discrimination in education. Co-educational schools, colleges and universities must not discriminate on grounds of sex in the way they treat or admit students. Harassment in further education establishments is also unlawful. This same section of the SDA outlaws discrimination in the provision of goods, facilities or services to the public, or a section of the public, or in the disposal or management of premises. Non-profit making voluntary bodies are exempt where the restriction of

services or membership to one sex accords with the purpose of the organisation. Similar restrictions in the provision of services are permitted where they are intended to avoid serious embarrassment.

### ***Positive Discrimination***

Part 5 deals with the issue of positive discrimination in favour of one sex. In general, this practice is not lawful, although there are limited exceptions in the provision of training or encouragement to apply for particular work where members of the relevant sex are under-represented. Such lawful exceptions are termed 'positive action'.

More recently the Sex Discrimination (Election Candidates) Act 2002 was passed, enabling political parties to adopt positive action measures to redress the gender imbalance in electoral politics. This amends the SDA and its Northern Ireland counterpart.

With these stated exceptions, the main role of the SDA is a reactive one: to prohibit specific forms of discrimination in a range of fields. As will be discussed below, with the advent of mainstreaming and 'equality duties', recent legislation has adopted a more proactive stance towards equality, stipulating a range of measures public bodies must adopt in order to promote greater equality of opportunity for all their employees and clients.

### ***The Equal Opportunities Commission***

The Equal Opportunities Commission (EOC) was created by Parliament in 1976 in order to promote equal opportunities between men and women and to work towards ending sex discrimination in all areas of public life. It has given advice on reviewing legislation in this area, and offers support to victims of discrimination.

### **Race Relations Act 1976 and the Commission for Racial Equality**

The Race Relations Act of 1976, as amended in 2000 and 2003, makes it unlawful to discriminate against anyone on grounds of race, colour, nationality (including citizenship), or ethnic or national origin. In cases where forms of discrimination apply to cultural and religious practices, these are also included. For example, Jews and Sikhs are protected under this legislation. The RRA 1976 contained powers to create a statutory Commission for Racial Equality to advise, advocate and monitor developments in this area. As with the EOC, it has a separate office in Scotland, dedicated to overseeing the Scottish racial equality agenda.

The RRA applies to employment, training, housing, education, public appointments and the provision of goods, facilities and services. The RRA identifies three main types of racial discrimination: direct discrimination, indirect discrimination and victimisation. The definition of these three forms of discrimination is similar to that used in the SDA. Direct discrimination is treating one person less favourably than another. Racist abuse and

harassment are forms of direct discrimination. Indirect discrimination applies to situations where members of a particular racial group are far less likely to be able comply with a requirement or condition that is imposed on everyone, and which cannot be justified on non-racial grounds. An example of where the RRA would apply in this respect would be in allowing Sikhs to be exempt from a rule prohibiting employees or school pupils to wear headgear. The RRA also prohibits victimisation of anyone who exercises their rights under the RRA or supports anyone else in doing so.

### ***Towards 'Positive Action' in Policy: the Race Equality Duty***

The RRA was amended in 2000, placing a general statutory duty on over 300 public authorities to: eliminate unlawful racial discrimination; promote equality of opportunity; and promote good relations between people of different racial groups. The listed authorities include the Scottish Administration, the National Assembly of Wales, the Armed Forces, the NHS, Local Authorities, Governing Bodies of publicly funded schools and colleges, the Housing Corporation, Communities Scotland and the Police.

The main aim of any 'equality duty' is to place more responsibility on services providers and employers to think strategically about equal opportunities, rather than leaving it to individuals to challenge poor practice. By imposing the duty on public bodies, it was hoped that the shift towards equality in their policies and service provision, would influence British society and culture as the non-discrimination message filtered through core services. In addition, the RRA placed a duty on public bodies to offer equality in employment in order to promote the appointment of staff that represented the ethnic diversity of the communities they served. The specific duties imposed by order of Scottish ministers are outlined in the Race Relations Act (Statutory Duties) (Scotland) Order 2002 and came into effect in March of that year. From that time named public bodies were required to produce clear, timetabled plans for meeting these duties. This is referred to as a Race Equality Scheme. To assist them in this, the Scottish office of the Commission for Racial Equality has issued a statutory code of practice (Scotland) for public authorities, as well as a non-statutory guide to good practice. Similar codes were produced for England and Wales. Race Equality Schemes must be reviewed every three years. In producing their Equality Schemes authorities are required to go beyond a mere audit of their policies and practices, by clearly showing how they have explored their underpinning values, principles and standards. Such Schemes should make provision for substantial consultation with a range of ethnic groups, as well as contain plans for policy review and dissemination, public access to information and services, and staff training.

Like its counterpart EOC, the CRE has not only an advisory role but also certain enforcement powers through which it can apply for a court order against any body that it believes to be failing to meet its duties under this legislation. Similarly, Scottish Ministers have the power to make orders regarding specific duties on Scottish public authorities, reflecting the powers of the Home Secretary in England and Wales.

Perhaps in anticipation of a future policy trend towards a single equality duty, the Code of Practice issued in 2002 in fact invited public authorities to consider developing a racial

equality scheme as part of a larger equality-mainstreaming strategy, provided that race remained a distinct and easily identifiable strand. This move would accord with earlier EU directives advocating a more coordinated approach to anti-discrimination policy.

### **Disability Discrimination Act 1995 and the Disability Rights Commission**

The Disability Discrimination Act 1995 (DDA) was passed in 1995 to address the discrimination that many disabled people face. At the same time it set out provisions for the creation of a statutory commission to oversee this area of equality: the Disability Rights Commission (DRC). Established in 1999 the DRC has both enforcement and promotional powers, and both apply to its most recent work on the duty to promote disability equality. Unlike the SDA, EPA or RRA, in order to be protected under the DDA an individual must first demonstrate that they qualify by proving that they have a disability. This is defined as ‘a physical or mental impairment, which has an adverse and long-term effect on his or her ability to carry out normal day-to-day activities.’ (DDA, Schedule 1). ‘Long-term’ is described as lasting for at least 12 months. Physical and mental impairments include sensory and hidden impairments (for example mental health problems, learning difficulties, dyslexia and conditions like epilepsy or diabetes).

According to Schedule 4 of the DDA, discrimination takes two forms: a person may be treated less favourably because of their disability and for reasons that cannot be justified, or there may be failure to make reasonable adjustments in situations where a person’s disability would place them at a substantial disadvantage. This definition of discrimination marks a departure from the idea of direct and indirect discrimination used in preceding equality legislation. Clearly these requirements still leave room for a degree of discretionary practice on the part of institutions. For example, reasonableness is not defined in the legislation, but the DRC states<sup>1</sup> that a range of relevant factors may be taken into account in determining what is reasonable in individual cases. Importantly, the idea of making reasonable adjustments represents a move towards an anticipatory duty, in which positive interventions are made to overcome barriers for all individuals with a disability, rather than responding to need on a case-by-case basis. Effectively, this laid the groundwork for the subsequent development of a positive equality duty, where the emphasis is on anticipating the needs of those individuals it seeks to protect. As with the SDA and RRA, the DDA also protects against harassment in the employment field. Here harassment is defined as unwanted conduct relating to the disabled person’s disability with the purpose or effect of violating the person’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.

The DDA offers protection against discrimination in the fields of employment (Part 2), goods and services (Part 3), education (Part 4), and transport (Part 5). In relation to employment, discrimination on grounds of disability is prohibited in recruitment, training, promotion, benefits, redundancy and dismissal. In addition to employers, trade organisations and qualifications bodies have a duty to comply with the DDA. Following these legal requirements, a Code of Practice on Employment and Occupation was developed offering practical guidance on how to prevent discrimination against disabled

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<sup>1</sup> This is set out in the Disability Rights Commission’s *Examinations and Assessment Good Practice Guide*, p3.



people in employment or when seeking employment. The Code applies to England, Wales and Scotland, and describes the duties of employers and others in this regard. This includes general advice on the nature and definition of disabilities, the legal rights of disabled people, best practice guidance on how to avoid discrimination in a range of situations, and details of the duties regarding reasonable adjustments. In all cases the duty applies to both in-work and pre-employment practices.

Part 3 refers to the provision of goods, facilities and services and includes the disposal or management of premises or land and private clubs. It requires service providers to make reasonable adjustments for disabled people, for example to change practices or policies which currently make it impossible or unreasonably difficult to access a service, or to provide auxiliary aids to make access easier. This part of the DDA also stipulates the requirements placed on transport stations and booking facilities to eliminate discrimination against disabled people. The question of transport more generally is addressed separately in Part 5 of the DDA. In particular, this requires transport providers to phase in measures to guarantee the minimum levels of accessibility stipulated in the legislation.

Part 4 of the Disability Discrimination Act 1995 deals specifically with the protection of all disabled people in education. While this applies to staff as well as students, Part 4 of the DDA does not apply to services and facilities provided wholly or primarily for staff (these would be covered by Part 2 of the Act). Part 4 of the Act did not originally include any duties on institutions not to discriminate against disabled people or students. Different parts of the legislation took effect at different times, and the original Act has been subject to a number of amendments that extend its scope. Specifically, the Special Educational Needs and Disability Act 2001 (SENDA) amends the 1995 DDA to include specific legislation for post-16 education. Following these amendments post-16 education providers are now required to develop a new direct discrimination duty. Specific duties are outlined in a Code of Practice (COPP16) developed by the Disability Rights Commission (DRC) for providers of post-16 education and training and related services. The Code has been developed under the new legislation and offers practical guidance for institutions on how to avoid discrimination, as well as helping disabled people to understand their rights under the law. It applies to England, Wales and Scotland. A separate Code of Practice exists for schools.

Responsible bodies in further and higher education have a duty to make reasonable adjustments, including the provision of auxiliary aids or services, and making adjustments to physical features. Schools do not have to adjust physical features under the DDA, where they have made proper inquiries into the matter and found that the cost is prohibitive. They do, however, have a duty under other legislation to review the physical access arrangements of their premises (see the Education (Disabled Strategies and Pupils Educational Records) (Scotland) Act (2002).

### ***The Disability Equality Duty***

The most recent legislative developments under the DDA 1995 (Amendment) (Further and Higher Education) Regulations 2006 go further in actively promoting disability

equality in key areas. For example they remove the justification defence for a failure to make reasonable adjustments, reverse the burden of proof, prohibit discriminatory advertisements and instructions to discriminate, and introduce specific provisions in relation to qualifications.

The Disability Equality Duty came into force in December 2006 and requires public authorities to take positive steps to promote disability equality, over and above the mere avoidance of discriminatory practice. Guidelines relating specifically to Scotland were published by the Disability Rights Commission in 2006, listing the public authorities and bodies to which the DED applies.

## **Equality Act 2006**

In its own words, the Equality Act is:

‘An Act to make provision for the establishment of the Commission for Equality and Human Rights; to dissolve the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission; to make provision about discrimination on grounds of religion or belief; to enable provision to be made about discrimination on grounds of sexual orientation; to impose duties relating to sex discrimination on persons performing public functions; to amend the Disability Discrimination Act 1995; and for connected purposes. 16<sup>th</sup> February, 2006’ (Equality Act, 2006, Chapter 3).

Although the EA included age and race into the equality strands at a later stage of the document, this initial message did not mention these areas specifically. The equality strands subsequently identified in the EA are: age; disability; gender; proposed, commenced or completed reassignment of gender; race; religion or belief; and sexual orientation (Part 1, 10:2, a-g).

Part 1 (Chapter 3) outlines how the EHRC will be set up and organised, its general duties, powers (including in relation to the Scottish Parliament) and responsibilities. The stated general duty of the EHRC is to encourage and support the development of a society in which people are able to achieve their potential without prejudice or discrimination, and in which the rights, worth and dignity of individuals and groups are equally respected. The EA requires the Commission to devise and publish a strategic plan, informed by wide-ranging evidence and consultation, and to be revised every three years. In relation to Scotland, the Commission is expected to defer its powers in relation to human rights actions in matters where the Scottish Parliament has legislative competence. This section lists the duties of the EHRC in relation to equality and diversity. They include educational roles like promoting understanding of the importance of equality and raising awareness of the rights guaranteed in the legislation; leadership roles like promoting good practice; and enforcement powers to ensure compliance with the law and to eliminate unlawful discrimination and harassment. This section concludes with plans for the dissolution of the three existing equality commissions.

Subsequent sections of the EA are devoted to discrimination on grounds of religion or belief and sexual orientation. Further amendments are also made to the provisions of the (amended) SDA and DDA. Part 2 thus prohibits discrimination that treats a person less favourably because of their allegiance or non-allegiance to any religion, or any philosophical or religious belief. This prohibition applies to the provision of goods, services and facilities, housing, education, discriminatory advertisements, and the activities of public authorities. A notable omission is the employment field. A number of exceptions and exemptions are also listed, for example allowing faith schools to continue selecting students on religious grounds. Protections already secured under the Race Relations Act for certain groups like Jews and Sikhs will continue under the religion and belief strand of the EA. A number of exemptions, additional provisions and vetoes are also given in Part 2, in relation to immigration and national security.

Part 3 addresses the question of discrimination on grounds of sexual orientation. Rather than making it unlawful, powers are given to the Secretary of State to enable him or her to make anti-discrimination provision ‘of a kind similar to Part 2 of this Act’; to define discrimination and harassment; and to make various other provisions equivalent to existing equality enactments. In effect, the Equality Act thus introduces new strands to the equality agenda, although it does not assign them all equal legal protections.

Finally, Part 4 amends the Sex Discrimination Act 1975 by creating a statutory duty on all public authorities to prevent sex discrimination and to promote equality of opportunity in the pursuit of all their activities. Specifically, the Act (c. 3: 85) requires *public authorities*, when carrying out their activities, to have due regard to the need:

- to eliminate unlawful discrimination and harassment, and
- to promote equality of opportunity between men and women.

Among the bodies exempt from this duty are: the House of Commons, the House of Lords, the Scottish Parliament, the General Synod of the Church of England, the Security Service, the Secret Intelligence Service, and the GCHQ.

Following this amendment to the SDA 1975, the Gender Equality Duty became the third equality duty applied to UK public authorities since 2000. It came into force on 6<sup>th</sup> April 2007. The Sex Discrimination (Public Authorities) (Statutory Duties) (Scotland) Order 2007 also outlines a set of ‘specific duties’ to be met by the listed public authorities. The aim of these specific duties is to map out the necessary steps towards delivering the general duty.

### **Equality and Scotland**

As discussed above, 1998 saw the introduction of a devolved governance structure in the UK. In Scotland this led to the creation of a Scottish Parliament and the Scottish Executive, instituted under the provisions of the Scotland Act 1998. As discussed above, while human rights is a reserved matter, the Scotland Act require that the actions of the Executive in devolved matters are compatible with Convention rights. In relation to

human rights, Scotland is thus governed by Westminster on the one hand, and the provisions of the Scotland Act on the other.

Similarly, Scotland is also governed by GB-wide equal opportunities legislation (the Sex Discrimination Act 1975, the Race Relations Act, 1976 and the Disability Discrimination Act, 1995), while the stipulations of the Scotland Act impose a devolved duty to encourage equal opportunities.

The Scotland Act defines Equal Opportunity thus:

“...the prevention, elimination or regulation of discrimination between persons on ground of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes including beliefs or opinions such as religious beliefs or political opinions.”  
(Scotland Act, 1998: Schedule 5, Reserved Matters, Part II)

It is interesting to note that this definition goes beyond some other anti-discrimination legislation by including social origin, thus highlighting the role of social class or socio-economic background/circumstances as a potential source of discrimination in Scotland.

### ***Managing the Equality Agenda in Scotland: the ECG and the EHRC***

An Equalities Coordinating Group was set up in Scotland to manage the transition to a single equality unit. This is a group of Scottish (based) organisations that have a common interest in the equality agenda. Among the core member organisations are the Scotland offices of the three statutory equality commissions: the Commission for Racial Equality, the Disability Rights Commission, and the Equal Opportunities Commission. The origins and remit of the CRE and DRC are discussed below. Other members include the Equality Network (addressing LGBT issues), Age Concern Scotland, The Scottish Human Rights Centre and the Scottish Inter Faith Council. Representatives from the Scottish Executive, Parliament and COSLA (Convention of Scottish Local Authorities) also participate.

The remit of the ECG is to focus on the equalities and human rights agenda in Scotland, while maintaining links with developments across the UK. With their fellow ECG members, the three equality commissions were heavily involved in developing the single Commission for Equality and Human Rights (EHRC), providing Scottish representation on its Task Force and now its Steering and Reference Groups. The EHRC has been set up in a way that is responsive to devolution and a separate Scotland Commissioner and Scotland Committee will be responsible for setting the EHRC's priorities for Scotland. In the context of devolved governance, the EHRC's operations will differ in Scotland from the rest of Britain. It will have a Scottish Office based in Glasgow, but this GB-wide commission will only address human rights on reserved matters. The Scottish Commission for Human Rights will deal with human rights issues in devolved areas.

The EHRC became fully operational from October 2007, when it will replace the EOC and the DRC. It is expected that the CRE will join the EHRC in 2009.

## **A Single Equality Bill for the UK**

In the next phase of its work on discrimination law, the UK Government is currently holding consultations on the introduction of a Single Equality Bill. It thus launched a Discrimination Law Review in February 2005 to consider how to improve the current discrimination law framework. On 12<sup>th</sup> June 2007 it published a consultation document outlining proposals for a Single Equality Bill. The introductory preface sets out the rationale for the proposals it contains, by stating both the moral and economic case for a more equal society. The proposals are set out in three main parts.

The first section calls for measures to simplify and harmonise existing legislation in order ensure consistency, standardisation and to update Equal Pay law in line with case law, as well as proposals to create a ‘culture of compliance’ with the law. Part 2 contains proposals to make the law more effective by widening the range of anti-discrimination measures it encompasses, extending the coverage of public sector equality duties, and improve practice in the private sector (by developing a ‘light touch “equality check tool”’ for employers and introducing a voluntary equality standard accreditation scheme). Among the strategies recommended for effective dispute resolution, is the proposal that Additional Support Needs Tribunals in Scotland should have the power to hear disability discrimination school education cases, mirroring the situation in England and Wales. Part 2 also includes proposals to replace the separate public sector equality duties (race, gender, disability) with a single equality duty. The proposals also seek views on whether such a single duty should include age, sexual orientation, and/or religion and belief. Unlike the proposal to create the single equality duty, the question of whether to include these equality strands is represented not as a recommendation but a speculative inquiry.

Part 3 contains proposals for modernising the law. This addresses questions including the adequacy of existing legislation in relation to grounds of discrimination (for example how they are defined). Also examined in the issue of age discrimination beyond the workplace. Specifically, the proposals consider the possibility of legislative measures like positive action provisions to address the needs of older people and prevent age discrimination outside the workplace. If enacted, these proposals could have a potentially significant impact on issues like residential care for the elderly. Part 3 also examines the question of whether organised religion should be allowed to treat people differently on the grounds of gender reassignment. Finally, this section seeks views on whether there are any other groups who are vulnerable to harassment outside the workplace, and if granting legislative protection would be a proportionate response to the problem.

Additionally, the document contains the Government’s proposals for implementing the EU Gender Directive through the Sex Discrimination Act 1975 (Amendment) Regulations 2007, relating to access and supply in the delivery of goods and services. The proposed strategy will involve extending to the provision of goods, facilities or services and premises, some of the key protections that currently exist in the field of employment and vocational training. These include protection from indirect discrimination,

harassment, discrimination on grounds of maternity and direct discrimination on grounds of gender reassignment.

### **The Situation Across Europe**

Having begun this overview of discrimination law in the European context, this section now returns to the European context by comparing the different member states in their approach to race and employment legislation. In a review of the then 25 member states, Cormack and Bell (2005) examine how each country has interpreted the Racial and Employment Equality Directives.

The Racial Equality Directive 2000 and the Employment Equality Directive 2000 indicate four types of discrimination: direct, indirect, harassment and instruction to discriminate. All 25 EU member states incorporated this definition of discrimination into their national legislation. However, some nations have made additional measures, like the duty to make reasonable adjustments contained in the UK's Disability Discrimination Act.

Not all EU member states have defined grounds of discrimination in their anti-discrimination legislation. Those that have include the UK, Austria, Ireland, the Netherlands and Sweden. The EU Racial Equality Directive and Employment Equality Directive both list six main equality strands of race, gender, disability, sexual orientation, religion or belief, and age. All six are now recognised in the UK Equality Act 2006, although not all EU member states have incorporated all six strands into their legislation. In fact, states have varied considerably in their approach to defining the grounds of discrimination. Some, like Belgium, attempted to compile a very extensive list of possible grounds, while others chose to remove certain grounds proposed in the Directives. For example, Latvia has excluded explicit reference to sexual orientation, although it does state that its list of grounds for discrimination is non-exhaustive. Similarly, Finland, Hungary, Latvia, Poland and Slovenia have all included a clause that the list given is not exhaustive.

Examples of additional grounds included in anti-discrimination legislation include genetic inheritance and family status (Portugal), education and financial status (Slovenia), while Hungary, the Netherlands and Poland have prohibited discrimination against part-time or fixed-term workers. Until recently the UK was the only EU state that excluded reference to 'colour' in its definition of race, although this was incorporated into the Equality Act 2006.

Perhaps the most debated aspect of the Racial Equality Directive's six equality strands has been how to interpret the term 'belief'. The Netherlands and Austria, for example, interpret the concept as encompassing broad philosophies ideologies, or moral stance. Other states have made explicit reference to political opinion when defining 'religion or belief'. These include: Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Hungary, Italy, Latvia, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovenia, Spain, UK (Northern Ireland only).

## Conclusion

The purpose of this paper has been to give an overview of the most significant policy developments that impact on equality and human rights in the UK. It begins with the historical and wider political context by examining the UK's obligations under international human rights instruments. It then outlines the most significant anti-discrimination legislation developed in the UK since the 1970s. The discussion has also aimed to highlight the particular implications of this legislation for a devolved governance context.

While the most significant pieces of legislation and their subsequent amendments are included, this is not a comprehensive examination of the equality and human rights policy. Readers are therefore encouraged to consult to the references at the end of this paper, containing links to full versions of the documents cited, along with their various amendments, related laws and companion materials.

The Appendix to this paper contains a document produced by the Women and Equality Unit at the Department of Trade and Industry. This document contains a very accessible overview of anti-discrimination legislation (both UK and international). It is available online [<http://www.womenandequalityunit.gov.uk>] and contains hyperlinks to the actual texts of the legislation referred to as well as the websites of the relevant government departments.

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## APPENDIX

Source: Women and Equality Unit [<http://www.womenandequalityunit.gov.uk>]

# Key Anti-Discrimination Legislation & International Obligations

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## Introduction

The following lists are intended to give a brief overview of some key pieces of legislation related to promoting equality and tackling unfair discrimination. The document is not intended to be comprehensive but simply to give a flavour of the statutory protection that exists.

As the lists are intended to be brief, not all pieces of equality legislation are covered. Therefore, to get an absolutely full picture of the legislative framework in a particular area one would need to check for all relevant additions and amendments, many of which are not contained in this document. The website of Her Majesty's Stationary Office (HMSO) ([www.hmso.gov.uk](http://www.hmso.gov.uk)) holds electronic copies of all UK legislation that has become law since 1988.

In addition to listing the legislation, hyperlinks have been provided, firstly to the relevant government department website and secondly to the actual text of the legislation. Where possible the link is provided to the official version of the Act, Regulation, Directive or Convention e.g. held by HMSO. However, where this has not been possible, an alternative has been provided. The accuracy of such documents should not be relied on but can be used as a guide to what is contained in the actual legislation.

Lastly, it is hoped that this document is a useful resource and reference point. If you have any difficulties using it or any suggestions for how it could be improved, please email your comments to [info-womenandequalityunit@dti.gsi.gov.uk](mailto:info-womenandequalityunit@dti.gsi.gov.uk).

## Anti-Discrimination Legislation

The UK has a range of legislation which makes discrimination on certain grounds unlawful. Here is a list of the key provisions:

Legislation	Year	Areas Covered	Government Department with Lead Responsibility
<a href="#">Equal Pay Act</a> (as amended)	1970	The EqPA gives an individual a right to the same contractual pay and benefits as a person of the opposite sex in the same employment, where the man and the woman are doing: <ul style="list-style-type: none"> <li>• Like work; or</li> <li>• Work rated as equivalent under an analytical job evaluation study; or</li> <li>• Work that is proved to be of equal value.</li> </ul>	<a href="#">Department of Trade &amp; Industry (Women &amp; Equality Unit)</a>
<a href="#">Sex Discrimination Act</a> (as amended)	1975	The SDA (which applies to women and men of any age, including children) prohibits sex discrimination against individuals in the areas of employment, education, and the provision of goods, facilities and services and in the disposal or management of premises.	<a href="#">Department of Trade &amp; Industry (Women &amp; Equality Unit)</a>
<a href="#">Race Relations Act</a>	1976	The RRA makes it unlawful to treat a person less favourably than another on racial grounds. These cover grounds of race, colour, nationality (including citizenship), and national or ethnic origin.	<a href="#">Home Office (Community &amp; Race)</a>
<a href="#">Disability Discrimination Act</a>	1995	The DDA prohibits discrimination against disabled people in the areas of employment, the provision of goods, facilities, services and premises, education; and provides for regulations to improve access to public transport to be made.	<a href="#">Department for Work &amp; Pensions (Disability &amp; Carers Directorate)</a> / <a href="#">Department for Education &amp; Skills</a> /

<b>Legislation</b>	<b>Year</b>	<b>Areas Covered</b>	<b>Government Department with Lead Responsibility</b>
			<a href="#">Department for Transport</a>
<a href="#">Sex Discrimination (Gender Reassignment) Regulations</a>	1999	These regulations are a measure to prevent discrimination against transsexual people on the grounds of sex in pay and treatment in employment and vocational training. They effectively insert into the SDA a provision to extend the Act, insofar as it refers to employment and vocational training, to include discrimination on gender reassignment grounds.	<a href="#">Department of Trade &amp; Industry (Women &amp; Equality Unit)</a>
<a href="#">Race Relations (Amendment) Act</a>	2000	The RR(A)A outlawed discrimination (direct and indirect) and victimisation in all public authority functions not previously covered by the RRA, with only limited exceptions. It also placed a general duty on specified public authorities to promote race equality.	<a href="#">Home Office (Community &amp; Race)</a>
<a href="#">Sex Discrimination (Election Candidates) Act</a>	2002	The Act enables political parties, if they wish, to adopt positive measures to reduce inequality in the numbers of men and women elected as representatives of their party. It amends the Sex Discrimination Act 1975 and Sex Discrimination (Northern Ireland) Order 1976.	<a href="#">Department of Trade &amp; Industry (Women &amp; Equality Unit)</a>
<a href="#">Race Relations Act 1976 (Amendment) Regulations</a>	2003	The Race Relations Act 1976 (Amendment) Regulations 2003 implement the EC Article 13 Race Directive. The Regulations enhance the RRA by, for example, amending the definition of indirect discrimination and changing the way in which the burden of proof applies, as well as removing a number of exceptions from the legislation. The Regulations extend protection from discrimination on the grounds of race and ethnic or national origins. These apply in the fields of employment and training, social protection and social advantage,	<a href="#">Home Office (Community &amp; Race)</a>

<b>Legislation</b>	<b>Year</b>	<b>Areas Covered</b>	<b>Government Department with Lead Responsibility</b>
		education, the provision of goods, facilities and services, and housing.	
<a href="#">Employment Equality (Sexual Orientation) Regulations</a>	2003 (Come into force December)	These regulations outlaw discrimination (direct discrimination, indirect discrimination, harassment and victimisation) in employment and vocational training on the grounds of sexual orientation. The regulations apply to discrimination on grounds of orientation towards persons of the same sex (lesbians and gays), the opposite sex (heterosexuals) and the same and opposite sex (bisexuals).	<a href="#">Department of Trade &amp; Industry (Employment Relations)</a>
<a href="#">Employment Equality (Religion or Belief) Regulations</a>	2003 (Come into force December)	These regulations outlaw discrimination (direct discrimination, indirect discrimination, harassment and victimisation) in employment and vocational training on the grounds of religion or belief. The regulations apply to discrimination on grounds of religion, religious belief or similar philosophical belief.	<a href="#">Department of Trade &amp; Industry (Employment Relations)</a>

## European Community Treaties and Conventions

The UK is a signatory to European Community Treaties and Conventions and is under an obligation to ensure that national law is consistent with European Community Law and Directives. Where this is not possible, then the courts will give any piece of Community Law with direct effect priority over domestic law. Some key equality provisions are:

Directive / Treaty	Year	Relevant Areas Covered	Government Department with Lead Responsibility
<a href="#">Article 141 (ex119) Treaty of Rome</a>	1957	Treaty establishing the European Community. This provides that men and women should receive equal pay for equal work or work of equal value.	<a href="#">Department of Trade &amp; Industry (Women &amp; Equality Unit)</a>
<a href="#">Equal Pay Directive (75/117)</a>	1975	This provides that all discrimination on the ground of sex in respect of all aspects of pay should be eliminated.	<a href="#">Department of Trade &amp; Industry (Women &amp; Equality Unit)</a>
<a href="#">Equal Treatment Directive (76/207)</a> amended by <a href="#">Directive (2002/73)</a>	1976 & 2002	This provides that there shall be no discrimination on grounds of sex in access to employment including promotion, vocational training and working conditions.	<a href="#">Department of Trade &amp; Industry (Women &amp; Equality Unit)</a>
<a href="#">Social Security Directive (79/7)</a>	1979	This requires equal treatment of men and women workers in statutory schemes providing protection against sickness, invalidity, old age, accidents at work and occupational diseases and unemployment.	<a href="#">Department for Work &amp; Pensions</a>
<a href="#">Pregnant Workers Directive (92/85)</a>	1992	This requires minimum measures to improve the health and safety at work of pregnant women and women who have recently given birth or are breastfeeding, including a right to maternity leave.	<a href="#">Department of Trade &amp; Industry (Women &amp; Equality Unit)</a>
<a href="#">Burden of Proof</a>	1997	This required any necessary changes in Member States' judicial systems to ensure	<a href="#">Department of Trade &amp;</a>

<b>Directive / Treaty</b>	<b>Year</b>	<b>Relevant Areas Covered</b>	<b>Government Department with Lead Responsibility</b>
<a href="#">Directive (97/80)</a>		more effective implementation of the principle of equal treatment.	<a href="#">Industry (Women &amp; Equality Unit)</a>
The Race and Employment Directives	2000	These Directives were adopted under Article 13 of the EC Treaty by the UK and other European Member States in 2000. Together, they provide a common framework of protection against discrimination and harassment.	<a href="#">Home Office / Department of Trade &amp; Industry / Department for Work &amp; Pensions</a>
<a href="#">Race Directive (2000/43)</a>	2000	The purpose of this Directive is to lay down a framework for combating discrimination on the grounds of racial or ethnic origin, with a view to putting into effect in Member States the principle of equal treatment.	<a href="#">Home Office (Community &amp; Race)</a>
<a href="#">Employment Directive (2000/78)</a>	2000	Prohibits discrimination on the grounds of sexual orientation, religion or belief, disability and age. It covers conditions for access to employment, self-employment and occupation, working conditions, including dismissals and pay; and vocational guidance and training.	<a href="#">Department of Trade &amp; Industry / Department for Work &amp; Pensions</a>



## Legislation that Impacts on Equality

Issues relating to equality are often covered in UK legislation which may primarily concern other or more broad issues.

Legislation	Year	Relevant Areas Covered	Government Department with Lead Responsibility
Transfer of Undertakings (Protection of Employment) Regulations	1981	Protects the rights of workers in the event of a relevant transfer of an undertaking to a new employer. All contracts of employment and employment relationships automatically transfer to the new employer at the date of transfer. The Regulations prohibit changes in contract terms connected with a relevant transfer.	<a href="#">Department of Trade &amp; Industry (Employment Relations)</a>
<a href="#">Employment Act</a>	1989	The Act includes an exemption from the operation of the Sex Discrimination Act for acts done in connection with certain specified statutory provisions relating to the protection of women at work.	<a href="#">Department of Trade &amp; Industry (Employment Relations)</a>
<a href="#">Pensions Act</a>	1995	Provides for equal treatment in occupational pension schemes. It does so by incorporating an equal treatment rule into every occupational pension scheme.	<a href="#">Department for Work &amp; Pensions (Pensions &amp; Retirement)</a>
<a href="#">Employment Rights Act</a>	1996	The ERA covers, among other matters, the rights: <ul style="list-style-type: none"> <li>• Not to be unfairly dismissed;</li> <li>• To maternity leave and paid time off for antenatal care;</li> <li>• To parental leave; and</li> <li>• To unpaid time off for dependents.</li> </ul>	<a href="#">Department of Trade &amp; Industry (Employment Relations)</a>
<a href="#">Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations</a>	1996	These provide for tribunals to award interest on back-pay in Equal Pay Act cases and compensation awards made under the Sex Discrimination Act 1975, the Race Relations Act 1976 and the Disability Discrimination Act 1995.	<a href="#">Department of Trade &amp; Industry / Home Office / Department for Work &amp; Pensions</a>
<a href="#">Data Protection Act</a>	1998	The Act came into force on 1 March 2000. It gives effect in UK law to the	<a href="#">Department for Constitutional</a>

Legislation	Year	Relevant Areas Covered	Government Department with Lead Responsibility
		1995 EC Data Protection Directive. The Act applies to computerised personal data and personal data held in structured manual files. It applies to anything at all done to personal data (“processing”) including collection, disclosure, use, destruction and merely holding. Organisations processing personal data must comply with the data protection principles. They require data to be fairly and lawfully processed; processed for limited purposes; adequate, relevant and not excessive; accurate; not kept longer than necessary; processed in accordance with data subjects’ rights; kept secure; and not transferred to non-EEA (European Economic Area) countries without adequate protection.	<a href="#">Affairs (Information Rights Unit)</a>
<a href="#">Human Rights Act</a>	1998	The Human Rights Act came fully into force on 2 October 2000. It gives further effect in the UK to rights contained in the European Convention of Human Rights. The Act: <ul style="list-style-type: none"> <li>• Makes it unlawful for a public authority (e.g. government department, local authority or the police) to breach Convention rights, unless an Act of Parliament meant it could not have acted differently.</li> <li>• Means that cases can be dealt with in a UK court or tribunal.</li> <li>• Says that all UK legislation must be given a meaning that fits with the Convention rights, if that is possible.</li> </ul>	<a href="#">Department for Constitutional Affairs (Human Rights Unit)</a>
<a href="#">National Minimum Wage Act</a>	1998	This provides that workers shall not be paid less than a designated minimum rate per hour.	<a href="#">Department of Trade &amp; Industry (Employment Relations)</a>
<a href="#">Working Time</a>	1998	These contain provisions regulating	<a href="#">Department of</a>

Legislation	Year	Relevant Areas Covered	Government Department with Lead Responsibility
<a href="#">Regulations</a>		<p>working time including:</p> <ul style="list-style-type: none"> <li>• A limit of average 48 hours work per week (though individual workers can agree to waive this).</li> <li>• Daily and weekly rest entitlements and rest breaks.</li> <li>• Special provisions relating to night work.</li> </ul> <p>The regulations have been amended a number of times in: 1999 (SI 3372), 2001 (SI 3256), 2002 (SI 3128) and 2003 (SI 1684).</p>	<a href="#">Trade &amp; Industry (Employment Relations)</a>
<a href="#">Employment Relations Act</a>	1999	<p>The Act established a new statutory procedure for the recognition of independent trade unions in organisations employing 21 or more workers if that is the wish of the majority of the workforce.</p> <p>The Act also introduced the right to be accompanied at disciplinary or grievance hearings by a trade union official or fellow worker – see also the ACAS Code of Practice on Disciplinary and Grievance Procedures.</p> <p>The Act also strengthened employees’ protection against discrimination on grounds of trade union membership, simplified the law on industrial action, extended protections for employees taking lawfully organised industrial action and gave new powers to the Certification Officer to determine complaints from trade union members about alleged breaches of trade union statute and rules.</p> <p>Most of the Act amended the Trade Union and Labour Relations (Consolidation) Act 1992.</p>	<a href="#">Department of Trade &amp; Industry (Employment Relations)</a>
<a href="#">Maternity and</a>	1999	These contain the detail of the rights to	<a href="#">Department of</a>

<b>Legislation</b>	<b>Year</b>	<b>Relevant Areas Covered</b>	<b>Government Department with Lead Responsibility</b>
<a href="#"><u>Parental Leave Regulations (as amended)</u></a>		maternity and parental leave contained in the Employment Rights Act 1996 (ERA). They also prescribe the circumstances in which a dismissal will be automatically unfair for the purposes of the ERA, if the dismissal is for a reason related to pregnancy, childbirth, maternity leave, or parental leave.	<a href="#"><u>Trade &amp; Industry (Employment Relations)</u></a>
<a href="#"><u>National Minimum Wage Regulations</u></a>	1999	These contain detailed rules as to who qualifies for the national minimum wage and what counts as working time and remuneration for these purposes.	<a href="#"><u>Department of Trade &amp; Industry (Employment Relations)</u></a>
<a href="#"><u>Part-Time (Prevention of Less Favourable Treatment) Regulations</u></a>	2000	The regulations give part-time workers the right not to be treated less favourably than full-time workers unless any difference in treatment can be objectively justified. They do not give a right to work part-time.	<a href="#"><u>Department of Trade &amp; Industry (Employment Relations)</u></a>
<a href="#"><u>Employment Act</u></a>	2002	<p>A wide ranging package, covering dispute resolution in the workplace, improvements to employment tribunal procedures, including the introduction of an equal pay questionnaire, provisions to implement the Fixed Term Work Directive, a new right to time off for union learning representatives, work focused interviews for partners of people receiving working-age benefits and some data sharing provisions.</p> <p>The Act also gives parents of children under six, or disabled children under 18, the right to request flexible working, with a statutory duty on employers to seriously consider their requests. It also introduced rights for fathers and adoptive parents to paid time off for the first time, and improved existing maternity rights.</p>	<a href="#"><u>Department of Trade &amp; Industry (Employment Relations)</u></a>
<a href="#"><u>Fixed-Term Employees</u></a>	2002	Fixed-term employees should get at least the same pay and conditions as	<a href="#"><u>Department of Trade &amp;</u></a>

Legislation	Year	Relevant Areas Covered	Government Department with Lead Responsibility
<a href="#">(Prevention of Less Favourable Treatment) Regulations</a>		similar permanent employees working for the same employer. Less favourable pay and conditions are only allowed if there are objective reasons for this. The regulations also limit the use of successive fixed-term contracts.	<a href="#">Industry (Employment Relations)</a>

## International Obligations

The UK is a signatory to a large number of United Nation’s International Conventions which have anti-discrimination provisions. Although these do not currently provide a right of individual complaint against the UK, policy should be informed by an awareness of the UK’s international obligations. Some of the most important are as follows:

Convention	Areas Covered
<a href="#">Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</a>	Torture and other cruel, inhuman or degrading treatment or punishment are particularly serious violations of human rights, and, as such, are strictly condemned by international law. Based upon the recognition that such practices are outlawed, the Convention strengthens the existing prohibition by a number of supporting measures, including an international monitoring mechanism.
<a href="#">Convention for the Protection of Human Rights and Fundamental Freedoms</a>	Commonly known as the European Convention on Human Rights. The Convention sets out a list of basic civil rights and freedoms that states are obliged to guarantee to everyone within their jurisdiction. These include the right to life, to protection against torture and inhuman treatment, to freedom and safety, to a fair trial, to respect for one’s private and family life and correspondence, to freedom of expression (including freedom of the press), thought, conscience and religion and to freedom of peaceful assembly and association. It has an international enforcement machinery under which states and individuals, regardless of their nationality, may refer alleged violations to the European Court of Human Rights in Strasbourg.
<a href="#">Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)</a>	CEDAW is the most comprehensive treaty on women’s human rights, establishing legally binding obligations to end discrimination.
<a href="#">Convention on the Rights of the</a>	The Convention is the principal children’s treaty

Convention	Areas Covered
<a href="#">Child</a>	encompassing a full range of civil, political, economic, social and cultural rights. The Convention states that all children under 18, without discrimination, have the right to survival, to develop their full potential, to be protected from harmful influences, abuse and exploitation, and to participate fully in family, cultural and social life.
<a href="#">International Convention on the Elimination of All Forms of Racial Discrimination</a>	This Convention defines and condemns racial discrimination and commits States to prohibiting and bringing it to an end, by all appropriate means.
<a href="#">International Covenant on Civil and Political Rights</a>	The Covenant protects the individual from the violation by states of a wide range of civil and political rights. Examples include the right to life, protection from torture, slavery, forced labour, arbitrary detention and such freedoms as movement, expression and association.
<a href="#">International Covenant on Economic, Social and Cultural Rights</a>	The ICESCR is designed to protect the economic, social and cultural rights of the individual from violation by states. It does so by placing a duty on states to progressively realise these rights. Examples include the right to work, the right to education, the rights to health and the right to social security.