

EQUALITY BILL: SECOND READING BRIEFING

6th May, 2009

The Equality Bill will be debated at Second Reading in the House of Commons on Monday 11th May. The following notes on the Bill have been prepared for MPs by the Church of England's Mission and Public Affairs Division.

Summary

The Church of England supports the broad objectives of the Bill in promoting fairness in society and improving redress for those who have suffered unjust treatment. The Church welcomes many of the measures in the Bill and the validity of its overall goals, but retains some concerns about the practical application of some specific aspects. In brief those concerns are that:

- In principle the law should not impose undue burdens of compliance, particularly on voluntary bodies with limited resources and expertise.
- Bodies which are not public authorities but which are exercising public functions, such as religious organisations working in the public sector, may be required by the new duties to act against their ethos. Room for religious difference in a diverse society must be protected.
- Religiously literate guidance will be needed in resolving potentially conflicting claims of discrimination, harassment or victimisation between different protected characteristics (including between those of different religions and beliefs). Such matters should not be left solely to the courts to adjudicate.
- There is potential for drift towards government and public authorities actively promoting religious equality, rather than avoiding religious discrimination - which could undermine the public place of the Church of England and the role of other religious bodies.
- Adequate and carefully-targeted exceptions should remain within the Bill as an important way of allowing religious groups to pursue their legitimate objectives.
- Further changes by means of secondary legislation should be limited, and must be scrutinised as carefully as possible by representatives of religious groups as well as in the Parliamentary process.
- The impact of the new public sector duty on socio-economic inequality on public bodies' may potentially involve a greater exposure to the risk of litigation. This would be unwelcome.

Further detail follows:

Effects of harmonisation and compliance

We recognise the desirability of simplifying the complex law on discrimination which has grown piecemeal over many years. However, the objectives of simplification and harmonisation across different ‘protected characteristics’ may be in tension. The Bill is very long and very complicated, and leaves a great deal of the detailed outworking to significant secondary legislation.

We also recognise that religious organisations must accept the obligation to treat people fairly, but we are concerned (as was the Discrimination Law Review) that the law should not impose undue burdens of compliance, particularly on voluntary bodies with limited resources and expertise. For this reason, it is vital that the law should be as clear and certain as possible, so that its requirements may be recognised and implemented with reasonable ease.

Religion and belief

The Church believes that unjust discrimination should be countered across all the ‘protected characteristics’ – subject, of course, to satisfactory definitions of justice. We support in principle the extension of protection to gender reassignment, marriage and civil partnership, pregnancy and maternity, religion or belief and sexual orientation and welcome the consolidated definitions of direct discrimination, indirect discrimination, harassment and victimisation. We have a particular interest in the characteristic of religion or belief and are concerned that the practice of religion should receive fair treatment.

We note that the definition of religion and belief in Clause 10 is extremely simple and, according to the Explanatory Notes, relies on case law which stipulates a clear structure and belief system. We also note that shared protected characteristics may be found within a larger religion or belief system. This seems right, though it may sometimes be complex and problematic in application.

Freedom of religion

One of our chief concerns is that equality and anti-discrimination law should not be formulated in ways that improperly restrict the freedom of religion, belief and conscience guaranteed by Article 9 of the European Convention on Human Rights. While Article 9(1) provides the freedom to manifest religion or belief in “*worship, teaching, practice and observance*”, Article 9(2) provides that the freedom to manifest “*shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.*” There is therefore potential for conflict when different protected characteristics give rise to claims of discrimination, harassment or victimisation. Although the issue of religious teaching and practice in relation to sexual orientation has been prominent in recent years, it is clear that conflicts can arise within the field of religion and belief, either between adherents of religious and anti-religious positions or between followers of different religions. Guidance will be needed on how to resolve such conflicts, without leaving them to the adjudication of the courts, and that guidance must be religiously literate.

The public sector equality duty

One of the major changes in the Bill, under Clause 143 and Schedule 19, is the extension of the equality duty laid on public authorities to the characteristics of age, religion or belief and sexual orientation. This requires them to have due regard to the need to eliminate discrimination and other prohibited conduct, to advance equality of opportunity and to foster good relations between different groups. The scope of these duties raises serious questions about what they would involve, notably the question of balancing conflicting rights referred to above. The application of the duty to those who are not public authorities but who exercise public functions might raise problems for religious organisations working in the public sector, requiring them to act against their ethos. We are also concerned that government and public authorities might be forced to adopt a policy, not merely of avoiding religious discrimination but of actively promoting religious equality, which could undermine the place of the Church of England and other religious bodies in public life.

Exceptions

We welcome the inclusion, amongst those bodies exempted by Schedule 18 from the public sector duty, of the General Synod of the Church of England and those exercising a judicial function. The latter provision, and other exempting provisions contained in Schedule 3, are important as they affect the operation of church courts in relation to the use of premises and other matters of church life. We also welcome:

- the retention of exceptions for religious and belief organisations in respect of services and public functions, premises and associations in paragraph 2 of Schedule 23;
- the retention of exemptions relating to employment by religious bodies in paragraphs 2 and 3 of Schedule 9.

We believe that carefully-targeted exceptions are one important means of allowing religious groups to pursue their legitimate objectives, and will seek to assure ourselves that the Bill as a whole contains adequate exceptions. In that connection we are very concerned that the scope of the exemption currently available under the Employment Equality (Sexual Orientation) Regulations 2003 in relation to employment for the purposes of an organised religion is proposed (without any consultation or assessment of the practical implications) to be reproduced in a form which is considerably more restrictive.

Schools

We welcome the provision of exceptions relating to schools with a religious character in Schedule 11, Part 3.

We are concerned that across the Bill these exceptions are retained and not constrained by other provisions.

Public sector duty regarding socio-economic inequalities

We welcome the purpose behind Part 1, of the Bill, which requires public authorities, when making strategic decisions, to consider how they might help to reduce the inequalities associated with socio-economic disadvantage. We have reservations, however, about the potential impact this may have on public bodies' greater exposure to the risk of litigation and question whether this laudable objective is best met through the creation of new law (especially when that law is expressed in terms which make its effect unclear).

Secondary legislation and guidance

The Bill contains provisions for ministers to make more detailed provisions, or to amend parts of the Bill, by secondary legislation. Whilst the most important provisions do appear to be covered on the face of the Bill, we believe that changes by means of secondary legislation should be limited, and must be scrutinised as carefully as possible. It is also vital that the clearest possible guidance on the interpretation and application of the law (especially the practicalities of balancing conflicting rights for public authorities) should be provided to all who will be affected by it.

The Church of England will be following the progress of the Bill closely through both Houses of Parliament.

Staff at Church House are available to discuss the Bill and its implications for religious groups, with all interested Members of Parliament.

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