



*Proposals to simplify and  
modernise discrimination law:  
Initial Regulatory Impact  
Assessment*

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# Executive Summary

This Regulatory Impact Assessment estimates the costs and benefits of various proposals and options that may form part of a Single Equality Bill. These measures have three main objectives:

- (i) **to standardise, simplify and consolidate discrimination law, where appropriate.** This covers measures to simplify definitions, exceptions, provisions on equal pay and disability-related provisions;
- (ii) **to make discrimination law more effective.** This covers measures to widen the scope for voluntary positive action measures, establish an outcome-focused integrated duty on public authorities to promote equality, and achieve better handling of discrimination cases by the courts;
- (iii) **to modernise discrimination law, where appropriate.** This covers measures to extend protection from discrimination on grounds of gender reassignment and pregnancy/maternity; consideration of whether to provide protection against unfair discrimination on grounds of age in the provision of goods, facilities and services, disposal or management of premises and exercise of public functions; and whether to extend statutory protection against harassment outside the workplace.

**Table 1: Overall summary of estimated total additional quantifiable costs and benefits:**

Note: familiarisation costs and simplification benefits are combined for all proposals on rows 2 and 3 below. They are shown separately in the specific tables.

Table/para and description	Additional costs				Additional benefits			
	One-off Costs (£m)		Recurring Costs (Yearly) (£m)		One-off Benefits (£m)		Recurring Benefits (Yearly) (£m)	
	Low Est	High Est	Low Est	High Est	Low Est	High Est	Low Est	High Est
<b>General benefits</b> Para 4.7: increased employment of disadvantaged groups							60	60
<b>Familiarisation</b> Table 3: familiarisation costs of all proposals	72.22	72.22						
<b>Simplification</b> Para 4.26: Simplification savings							3.72	4.33
<b>Definitions</b> Table 4, option 2: simplification of definitions			0.820	1.455			0.196	0.196
<b>Exceptions</b> Table 5, option 2: simplification of exceptions			0.316	0.316			0.372	0.392
<b>Equal pay</b> Table 6, option 2: simplification of equal pay law	Costs not quantified				Benefits not quantified			
<b>Disability</b> – capacities change (table 7, para 4.76)			0.306	0.767				
<b>Disability</b> – disadvantage test: (para 4.78)			2	6				
<b>Positive action</b> Table 8, option 2: widening scope for positive action	No mandatory costs				Proportion of benefits – row 1			

**Table 1 : Overall summary of estimated total additional quantifiable costs and benefits: (continued)**

<b>Public sector duty*</b> Table 9, option 3: integrated public sector duty: set-up and running costs	44.1	121.9	41.9	61.1			46.1	61
<b>Court cases</b> Table 10, option 1: better handling of court cases	0.032	0.032	0.128	0.286			0.166	0.390
<b>Age discrimination*</b> Table 11, option 2: extending protection against age discrimination	Minimal additional costs in most areas, where commitments to eliminate discriminatory policies and practices are already in place (e.g. mental health services) but potentially significant costs in respect of social care which have not yet been quantified.						12	39.5
<b>Harassment*</b> Para 4.200			0.424	1.057				
<b>Disability adjustments</b> Table 12 (option 2): disability-related adjustments to common parts of premises	0	27			24	53		
<b>TOTALS (quantifiable)</b>	116.35	221.15	45.89	70.98	24.0	53.0	122.55	165.8

\* Note that the RIA does not recommend particular options under these headings. The options selected in this summary table are those where we estimate there would be potentially the most significant impacts.

Estimates of costs and benefits are provisional. A full Regulatory Impact Assessment will be published alongside the Single Equality Bill for further comment.

The key impacts can be summarised as follows:

**General benefits** – The Equalities Review Interim and Final Reports and the Women and Work Commission Report have indicated that the benefits of reduced discriminatory practices and greater equality could be very significant. Some of the proposals in the Regulatory Impact Assessment will, if implemented, help to increase the employment of under-privileged groups and deliver a fraction of these potential benefits. We have estimated this benefit at £60m per year.

**Familiarisation costs** – According to provisional estimates there would be an overall one-off familiarisation cost for employers and individuals of £72.22m, consisting of £43.51m for small firms; £15.03m for medium/large firms; and £12.88m for public authorities, plus just over £3m for landlords.

**Simplification benefits** – This will benefit new businesses and businesses growing from self-employed to employer status. The total saving is estimated as being between £3.72m and £4.33m a year, or an average of £93 per small firm.

**Simplifying definitions** – Employers and service providers will benefit from greater consistency in definitions and their application and the potential for confusion will be reduced. We estimate that this could increase slightly the number of cases going to court.

**Simplifying exceptions** – The key recommendation in this section is to apply the genuine occupational requirement test consistently across all strands, but keep specific exceptions where appropriate. There may be some costs as a result of slightly more cases but these should be matched or outweighed by benefits.

**Simplifying equal pay law** – The proposal is to incorporate the equal pay provisions along with the sex discrimination provisions within a single piece of legislation (the Single Equality Bill). This would reduce the risks of confusion for employers and individuals.

**Removing the list of capacities from the definition of disability** – This will make it easier for some individuals with some types of impairment to prove they meet the definition of disability. We estimate that this will lead to a small increase in the number of cases reaching tribunals, resulting in an increase in costs of between £0.306m and £0.767m a year.

**Introducing the “substantial disadvantage” test as the trigger for making reasonable adjustments for disabled people** – We estimate that this could result in a 1% to 3% increase in the number of reasonable adjustments required, resulting in a cost of between £2m and £6m a year.

**Widening the scope of voluntary ‘positive actions’** – This would allow employers and service providers to have a freer hand to improve opportunities for specific groups. Firms which choose to use these measures may benefit from increased workforce satisfaction, greater productivity and efficiency.

**Public sector equality duties** – The consultation considers a single integrated duty requiring public authorities to take steps towards the achievement of equality. The quantifiable benefits are estimated to be

between £46.1m and £61m. The overall set-up costs for all public authorities is estimated as between £44.1m and £121.9m. There will also be on-going costs to public authorities of an estimated overall total £41.9m to £61.1m a year.

**Improving the handling of discrimination cases in the county and sheriff courts** – We seek views on the proposals for judges to receive specific training in discrimination cases and be accompanied by assessors in all discrimination cases. This could reduce the amount of time on each case, with savings for employers and individuals but some costs arising from training of judges and payments for assessors.

**Prohibiting age discrimination** – We seek views on whether to prohibit age discrimination in the provision of goods, facilities and services. No decision will be taken until after the full public consultation has been completed. This would result in one-off familiarisation costs and potentially significant costs in social care, but could generate savings for individuals, for example from reduced insurance premiums, and increase older people's access to store credit cards. These benefits are estimated at between £12m and £39.5m

**Harassment** – We seek views on whether to extend the prohibition of harassment outside the workplace to cover sexual orientation, religion or belief, age and disability. We estimate this could result in a small increase in the number of cases brought before the courts.

**Disability-related adjustments to common parts of premises** – We propose to make legislative changes requiring landlords to make adjustments to common parts where reasonable. This will benefit an estimated 29,000 disabled people. There will be resulting costs but we estimate that these should be outweighed by benefits, for example through reductions in the need for home care.

# 1. Title of proposal

- 1.1 Simplification, modernisation and increased consistency of discrimination law under the Discrimination Law Review.
- 1.2 The Discrimination Law Review is intended to lead to a Single Equality Bill which the Government is committed to introducing during this Parliament. This Regulatory Impact Assessment should be of interest to employers and service providers in the public and private sector and to employees and members of the public who are customers of goods and services or who make use of public or private-sector facilities.
- 1.3 Estimates of costs and benefits are provisional. Consultees are asked to comment on these. A full Regulatory Impact Assessment will be published alongside a Single Equality Bill, for further comment.

## 2. Purpose and intended effect

### Objectives

2.1 This package of measures has three main objectives:

- (i) **to standardise, simplify and consolidate discrimination law where appropriate.** This covers measures to simplify definitions, exceptions, provisions on equal pay and disability-related provisions;
- (ii) **to make the law more effective.** This covers measures to widen the scope for voluntary positive actions, establish an outcome-focussed integrated duty on public authorities to promote equality, encourage the use of public-sector procurement to contribute to the promotion of equality and achieve better handling of discrimination cases by the courts;
- (iii) **to modernise the law.** This covers measures to extend protection from discrimination on grounds of gender reassignment and pregnancy/maternity; consideration of whether to provide protection against unfair discrimination on grounds of age in the provision of goods, facilities and services and exercise of public functions; and whether to extend statutory protection against harassment outside the workplace.

2.2 The timescale for achieving these objectives will be triggered by enacting a Single Equality Bill. Results such as improved guidance from the Commission for Equality and Human Rights should start to be available within 12-18 months of enactment. Measures to achieve better handling of discrimination cases by the courts should also take effect within 12-18 months of enactment. Other measures to make the law more effective will achieve results over a longer period of time.

2.3 The proposals would extend to England, Wales and Scotland.

## Main concerns

2.4 There are three main concerns:

- (i) **different levels of protection for different groups and the use of differing concepts and definitions.** The need is to put the whole of discrimination law on a consistent and coherent basis. This need not mean automatically the same level of protection for all groups, but there should be a justified rationale where the level of protection is different.
- (ii) **persistent inequalities within institutions and in society at large**, as identified by the Equalities Review in its March 2006 interim report<sup>1</sup> and its final report<sup>2</sup>. Some proposals considered in this Regulatory Impact Assessment address this concern.
- (iii) **the need to improve the operation of the courts** in handling discrimination cases

## Rationale for government intervention

2.5 The proposed measures address the following risks that would arise if there were no government intervention:

- **to accessibility and transparency of the law and hence cases arising out of ignorance.** A simpler, single piece of equality legislation will allow the Commission for Equality and Human Rights to produce simpler and clearer guidance. These simplification gains should reduce the number of cases coming to court out of ignorance and hence save money for business, claimants and the public sector.
- **to the efficient operation of business and markets, as a result of continuing discrimination and persistent disadvantage.** The Women and Work Commission report of February 2006<sup>3</sup> showed the costs of failing to recognise women's skills and under-utilising their abilities in the workplace. Failure to utilise the talents and potential of the diverse range of individuals who make up the workforce or to respond to demand from the diverse communities has an economic cost. The benefit of Government intervention is estimated in Table 2 below as around £60m per year.

<sup>1</sup> The Equalities Review was launched and has proceeded in parallel with the Discrimination Law Review. The former focuses more on identifying the wider social and policy causes of persistent inequalities; the latter focuses on the legislative framework. Both reviews are intended to feed into preparation of a Single Equality Bill.

<sup>2</sup> Fairness and Freedom: The Final Report of the Equalities Review, February 2007.

<sup>3</sup> "Shaping a Fairer Future".

- **to the efficient operation of the judicial system.** There is a relative imbalance of expertise between employment tribunals (which deal with discrimination cases in the workplace) and the courts (which deal with the relatively few discrimination cases outside the workplace). The proposals on the operation of the courts seek to provide more effective handling of discrimination cases.

## **3. Consultation**

### **Within government**

- 3.1 The consultation document and Regulatory Impact Assessment have been developed by the Women and Equality Unit in the Department for Communities and Local Government in consultation with a wide range of government departments including the Department of Trade and Industry, Home Office, Department for Work and Pensions, Ministry for Justice and the Department for Education and Skills. Others consulted include the Small Business Service and the Treasury.

### **With business and other external stakeholders**

- 3.2 There has been some initial consultation with business representatives, including the CBI, Federation of Small Businesses, the Employers Forum on Age and others. Representatives of large and small firms were included in a Reference Group of external stakeholders overseeing both the Discrimination Law Review and the Equalities Review. The Reference Group also included representatives of the equality Commissions and of unions. Initial pre-consultation submissions have been received from a number of stakeholders.
- 3.3 During September and October 2006, several discussion meetings were held with practitioners including business representatives, academics, equality representatives and other experts on specific issues: the integrated public sector duty (structure and enforcement); positive action; age discrimination outside the workplace; enforcement; public-sector procurement; harassment; and guidance.
- 3.4 We intend that the formal consultation will take the views of stakeholders through a series of consultation events involving seminars/discussions and one-to-one briefings, as well as through written responses.

## 4. Estimated costs and benefits

### Structure of this section

This section looks at the general and specific costs and benefits of the proposed measures. It is subdivided into:

Part A: General costs and benefits

Part B: Costs and benefits of the individual measures

An overall summary table is shown below:

<b>Table 2: Overall summary of estimated total additional quantifiable costs and benefits</b>								
<b>Note: familiarisation costs and simplification benefits have been merged for all measures in rows 2 and 3 below. They are shown separately in the specific tables.</b>								
Table/para and description	Additional costs				Additional benefits			
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<b>Exceptions</b> Table 5, option 2: simplification of exceptions			0.316	0.316			0.372	0.392

<b>Equal pay</b> Table 6, option 2: simplification of equal pay law	Costs not quantified				Benefits not quantified			
<b>Table 2: Overall summary of estimated total additional quantifiable costs and benefits (continued)</b>								
<b>Disability</b> – capacities change (table 7, para 4.76)			0.306	0.767				
<b>Disability</b> – disadvantage test: (para 4.78)			2	6				
<b>Positive action</b> Table 8, option 2: widening scope for positive action	No mandatory costs				Proportion of benefits – row 1			
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<b>TOTALS (quantifiable)</b>	116.35	221.15	45.89	70.98	24.0	53.0	122.55	165.8

\* Note that the RIA does not recommend particular options under these headings. The options selected in this summary Table are those where we estimate there would be potentially the most significant impacts.

## Part A – General costs and benefits

### Benefits – General

- 4.1 The Equalities Review interim report estimated costs arising from various groups being out of work and therefore not earning a waged income<sup>4</sup>:
- mothers: £2.09bn in income foregone and £5.69bn in government revenue foregone;
  - mothers with children under 11: £1.16bn in income foregone and £3.15bn in government revenue foregone;
  - disabled people: £3.45bn in income foregone and £8.86bn in government revenue foregone;
  - Pakistani and Bangladeshi women: £0.11bn in income foregone and £0.30bn in government revenue foregone<sup>5</sup>.
- 4.2 The Women and Work Commission's report estimates that the total benefits of increasing women's employment and reducing occupational segregation could be worth between £15bn and £23bn or 1.3 to 2.0 per cent of gross domestic product<sup>6</sup>. This represents the returns from a more efficient use of the country's labour resources, to which some of the proposed measures in this Regulatory Impact Assessment should contribute.
- 4.3 The Equalities Review interim report has attempted to measure the broader value to society of a more equitable distribution of resources<sup>7</sup> by applying the concept of diminishing marginal returns to income<sup>8</sup>. This concept presumes that a more equitable distribution of resources will raise economic welfare since additional consumption by poor

<sup>4</sup> Because there is overlapping in some of the criteria (Pakistani and Bangladeshi women also clearly fall within the category of women in general), the results cannot simply be aggregated to obtain the total cost of discrimination.

<sup>5</sup> Equalities Review interim report, March 2006, Table 1 (page 67): The cost of unemployment.

<sup>6</sup> Ibid, Chapter 1, para 35.

<sup>7</sup> This is measured by a reduction in consumption inequality by 30 per cent.

<sup>8</sup> As highlighted by the Equalities Review interim report, this remains a controversial assumption but nonetheless carries significance.

individuals is valued more highly than it is by wealthy individuals<sup>9</sup>. The interim report places a value on this of around 6 per cent of gross domestic product, or £43bn based on domestic expenditure on goods and services in 2004.

- 4.4 This welfare estimate is still likely to underestimate the true benefit. The method used applies an income-based consideration of reduced inequality only. For instance, it does not consider additional welfare that may be derived from greater economic participation as a result of tackling discriminatory barriers. There are wider indirect costs associated with inactivity, such as reduced self-esteem and the loss of human capital associated with inactivity, that are not accounted for by this approach.
- 4.5 The measures in this Regulatory Impact Assessment most likely to affect employment of underprivileged groups and therefore to count towards the general benefits identified are those to do with voluntary positive action measures; and the integrated public sector duty (including procurement).
- 4.6 There is no suggestion that these measures alone would result in benefits of anything like the order of magnitude indicated above. However, it would be reasonable to assume that they should help achieve a fraction of the potential benefits over time.
- 4.7 To give a crude indication, suppose we combine the costs identified by the Equalities Review and the Women and Work Commission, that is to say £43bn in macro benefits from the Equalities Review with £15bn to £23bn in micro benefits from the Women and Work Commission (note that this includes only micro benefits to women and not the other five equality strands, therefore almost certainly underestimating the total benefits), and apply a fraction of say one thousandth to represent the effect of measures considered by this Regulatory Impact Assessment, this gives purely indicative benefits of somewhere in the region of £60m.
- 4.8 Moreover, many of the measures proposed in the Green Paper potentially go beyond employment to impact on the provision of goods, facilities and services: for example, extension of protection against

<sup>9</sup> Note that the gains specified here with respect to reduced consumption inequality are not intended as endorsement of redistribution directly. The debate regarding redistribution and the tensions or synergies between equity, efficiency and growth has a long history among economists. Instead, in this instance, a more equitable distribution of resources and reduced consumption inequality results from better labour market representation of disadvantaged groups who otherwise suffer from discrimination. Indeed a reduction of inequality in this way should benefit growth.

discrimination on grounds of age, gender reassignment, pregnancy and maternity; and against harassment on grounds of sex, religion or belief, sexual orientation and age. Some businesses can expect extra revenue from the additional trade that will take place as a result of business no longer lost due to discrimination (or the perceived risk of experiencing it) or harassment.

- 4.9 It is clear from the above paragraphs that creation of a fairer society has economic benefits in its own right and that they could be substantial.

## Costs – General (time investment and familiarisation)

- 4.10 A one-off familiarisation cost will attach to most of the proposals covered by this Regulatory Impact Assessment. It is assumed that “familiarisation”, in the great majority of cases and for most employers and individuals, will mean familiarisation with or through guidance and advice provided by the Commission for Equality and Human Rights and/or by other advisory bodies such as ACAS (Advisory, Conciliation and Arbitration Service). It is also assumed that “familiarisation” means reaching the point where a manager or relevant employee of a firm is aware of the changes in the law and how they impact on his/her business.

### Smaller firms

- 4.11 In smaller firms it is assumed that a general administrator/manager will be responsible for implementation. Data from the Annual Survey on Hours and Earnings (ASHE) (2005) show that an average gross hourly wage for this occupation (ASHE code 11) is £20.79. When uplifted by 30% to allow for non-wage labour costs, this becomes £27.03 an hour. This is then multiplied by the time investment estimated to become familiar with the new guidance; and subsequently by the number of smaller firms likely to need to become familiar with the legislation in any one year.
- 4.12 There are 1,146,900 small businesses with employees and 3,162,600 without (source: Small Business Statistics 2005). Besides those small businesses that seek advice because they are involved or are likely to become involved in a case, there will also be a proportion of businesses which will respond to planned Government publicity and guidance produced by the Commission for Equality and Human Rights. For the purposes of this Regulatory Impact Assessment, we assume that within the pool of most relevant small businesses (those with employees), 20% or 230,000 administrators/managers are likely to need to familiarise themselves with the law at any one time each year.

## Medium and larger firms

4.13 In medium and larger firms it is assumed that there will be a dedicated personnel manager to read guidance, answer follow-up questions and disseminate information to other parts of the organisation. Using ASHE 2005 data for a personnel manager (ASHE code 1135), average gross wages amount to £22.31 and £29.00 after inclusion of non-wage labour costs. It is assumed that this more proactive dissemination of information will take place in all 37,020 firms employing 50 or more employees.

## Public sector

4.14 Familiarisation costs will also fall to the 27,840 public authorities who will need to be aware of the law. It is assumed that each of the public authorities will have a personnel officer who is responsible for reading guidance, answering follow-up questions and disseminating information to other parts of the organisation; and that the non-wage labour costs of such a personnel manager are the same as in the private sector.

## Estimation of time investment and familiarisation costs

4.15 Table 3 shows the estimated time and costs of familiarisation with each of the proposed measures. These costs are also shown in each of the tables specific to the measures.

<b>Table 3: Familiarisation costs of all proposals</b>					
Item	Description	Time to familiarise	No. of firms (SMEs = small and medium-sized enterprises)	Hourly cost	Total familiarisation costs (£m)
1.	Simplifying definitions (Table 4)	1 hr 2 hrs 2 hrs	(i) 230,000 SMEs (ii) 37,020 medium/ large (iii) 27,840 public authorities	£27.03 £29.00 £29.00	6.22 2.14 1.61
2.	Rationalising exceptions (Table 5)	1 hr 2 hrs 2 hrs	(i) 230,000 SMEs (ii) 37,020 medium/large (iii) 27,840 public authorities	£27.03 £29.00 £29.00	6.22 2.14 1.61
3.	Equal pay simplification (Table 6)	1 hr 2 hrs 2 hrs	(i) 230,000 SMEs (ii) 37,020 medium/ large (iii) 27,840 public authorities	£27.03 £29.00 £29.00	6.22 2.14 1.61
4.	Disability law simplification (Table 7)	1 hr 2 hrs 1 hr	(i) 230,000 SMEs (ii) 37,020 medium/large (iii) 27,840 public authorities	£27.03 £29.00 £29.00	6.22 2.14 0.81
5.	Voluntary positive actions (Table 8)	1 hr 2 hrs 2 hrs	(i) 230,000 SMEs (ii) 37,020 medium/large (iii) 27,840 public authorities	£27.03 £29.00 £29.00	6.22 2.14 1.61
6.	Public sector duty (Table 9)	3 hrs	(i) 27,840 public authorities	£29.00	2.42
7.	Better handling of court cases (Table 10)		No familiarisation necessary for firms or public authorities		–
8.	Protection against age discrimination (Table 11)	1 hr 2 hrs 2 hrs	(i) 230,000 SMEs (ii) 37,020 medium/large (iii) 27,840 public authorities	£27.03 £29.00 £29.00	6.22 2.14 1.61
9.	Protection against gender reassignment discrimination, beyond Gender Directive		Included with costs of familiarising with Gender Directive changes, see Annex D		
10.	Protection against pregnancy & maternity discrimination, beyond Gender Directive		Included with costs of familiarising with Gender Directive changes, see Annex D		
11.	Harassment extension	1 hr 2 hrs 2 hrs	(i) 230,000 SMEs (ii) 37,020 medium/large (iii) 27,840 public authorities	£27.03 £29.00 £29.00	6.22 2.14 1.61
12.	Common parts of premises (Table 12)	2 hrs	(i) 14,000 landlords	£29.00	0.81
<b>TOTAL FAMILIARISATION COSTS</b>					<b>£72.22m</b>
Note: the above table does not include costs of familiarisation with measures under the Gender Directive, indicated in Annex C.					

4.16 This includes familiarisation costs to:

Small and medium-sized enterprises: £43.51m

Medium/large firms: £15.03m

Public authorities: £12.88m

Landlords: £3.30m

(note: there is a small discrepancy with the Table, due to rounding)

4.17 Based on the above table, the total time investment by general administrators/managers in small businesses and personnel managers in medium/larger businesses and public authorities in order to become familiar with all the measures proposed in this Regulatory Impact Assessment is: 7 hours (small and medium-sized enterprises) and 14 hours (medium/larger firms). The higher total for larger firms reflects the assumption that such firms will have a dedicated officer whose task is not only to assimilate the relevant guidance but also to transmit it to colleagues in the organisation.

4.18 On this basis, the one-off familiarisation cost for an individual small business will be £189.21<sup>10</sup>. The total one-off cost for the 230,000 small businesses estimated to be seeking familiarisation will be £43.51m<sup>11</sup>. Given our assumption that not all small businesses familiarise themselves in year 1, there will be ongoing costs in subsequent years as more businesses feel the need to do so. However, we assume that most of the firms likely to familiarise themselves will do so in early years, so that these ongoing costs reduce until they become negligible<sup>12</sup>.

4.19 For medium and larger firms, the individual one-off familiarisation cost will be £406<sup>13</sup>. The total one-off familiarisation cost will be: £15.03m<sup>14</sup>.

4.20 For public authorities, the individual one-off familiarisation cost will be £464. The total one-off familiarisation cost will be £12.88<sup>15</sup>.

4.21 On this basis, the total costs of familiarisation with the proposals will be £72.22m in the first year.

<sup>10</sup>  $7 \times £27.03 = £189.21$ .

<sup>11</sup>  $£189.21 \times 230,000$ .

<sup>12</sup> We do not have to consider costs to firms which are either new (there is a considerable annual churn of small businesses – around 10%) or which grow to become employers, because they would have to familiarise themselves with equalities legislation regardless of the additional propositions under the review. In fact, we assume that the simpler nature of the new legislation should actually save familiarisation costs for these firms.

<sup>13</sup>  $14 \times £29$ .

<sup>14</sup>  $14 \times £29 \times 37,020$ .

<sup>15</sup>  $16 \times £29 \times 26,000$ .

## Part B: Costs and benefits of individual measures

### Objective (i): standardising, simplifying and consolidating discrimination law

#### Benefits of simplification – general

- 4.22 Initial estimates indicate that a Single Equality Bill might be equivalent to around 250-350 clauses i.e. about one third of the combined size of the major pieces of legislation being incorporated within it. Initial research indicates that there are more than 2500 pages of website guidance produced by the three existing equality Commissions. For illustrative purposes, it is assumed that a simpler law will reduce by one-third the total guidance required to enable an employer or individual to acquire familiarity.
- 4.23 Table 3 shows the overall estimated costs of familiarisation with the various proposals in this Regulatory Impact Assessment. This will be a new burden for companies and public bodies which have previously familiarised themselves with past equalities legislation. We consider these to be the stock of bodies to which familiarisation costs apply. By contrast, new businesses and those growing from self-employed to employer status represent a new flow of businesses which will benefit from the simpler legislation developed for future years.
- 4.24 We estimate that there will be between 100,000 and 120,000 new employers per year who benefit from simplification.
- 4.25 We also assume that in any one year, 40% of small and medium-sized enterprises which belong to the flow of new employers are benefiting from simplified familiarisation.
- 4.26 We estimate above that familiarisation with old legislation would have cost £282, implying a one-third saving of £93<sup>16</sup> per small firm for the simplified legislation. Applying this to our new small firms, this produces a total benefit of £3.72m to £4.33m<sup>17</sup>.
- 4.27 There are also those companies that grow and become employers. Figures are hard to arrive at but some 35% of companies without employees expect to grow within the next 12 months (source: Federation of Small Businesses biannual membership survey 2006, Carter et al). On this basis it would be reasonable to assume that 5% to 10% of firms without employees become employers for the first time.

<sup>16</sup> £282 x 2/3 = £189.

<sup>17</sup> 100-120,000 x 0.4 x £93.

Whilst it clearly would be possible to refine the numbers further, there might be between 50,000 and 100,000 new employers each year.

- 4.28 Better understanding of the law should reduce inadvertent non-compliance that leads to claims. However it is uncertain as to whether this will be offset or even outweighed by increased claims resulting from greater awareness of rights.
- 4.29 Courts and tribunals should be able to interpret the law more consistently, which may reduce the time and costs of cases and the likelihood of appeal.

## **Measure (a): simplifying and standardising definitions of discrimination and related concepts**

### **Sectors and groups affected**

- 4.30 The measure affects all groups and sectors.

### **Individual elements of simplifying definitions**

#### ***Direct discrimination: perception and association***

- 4.31 The consultation document does not propose any major changes in the different approaches in relation to the different groups, because the existing approaches are considered to be well-founded – hence it is assumed there will be no or only negligible costs.

#### ***Indirect discrimination: definition of cause; test for proving indirect discrimination; formulation of objective justification***

- 4.32 The proposal is to have uniform definitions of indirect discrimination:
- (i) removing the definition of cause as being a “*requirement or condition*” and replacing it with “*provision, criterion or practice*”;
  - (ii) removing the test which requires claimants to demonstrate that “*a considerably smaller proportion*” of their sex or racial group can comply with a requirement or condition than that of another sex or racial group, and replacing it with one which requires it to be shown that claimants are “*put at a particular disadvantage*”;
  - (iii) removing the condition that indirect discrimination is lawful so long as it is “*justifiable*” and replacing it with the condition that it must “*be a proportionate means of achieving a legitimate aim*”.

For the following areas:

- sex in areas other than employment or vocational training<sup>18</sup>;
- race, in relation to nationality and colour.

4.33 This will bring the approach in the above two areas in line with the existing approach in all other areas.

## Benefits

### Option 1: do nothing

4.34 Annex B (Table 17) estimates the current number of discrimination cases involving provision of goods, facilities and services brought before the court each year: 4-9 on grounds of sex; 26-39 on grounds of race. There are also just over 3,000 cases of race discrimination (where this is the main component) in employment tribunals (Annex A, Table 15). There would be no additional benefit from doing nothing – and a failure to standardise definitions across all areas of discrimination will leave businesses and individuals grappling with grey areas.

### Option 2: standardisation (recommended)

4.35 Employers and service providers will benefit by having only one definition to deal with.

4.36 Potential claimants will benefit because they will be able to argue their case without necessarily having to produce quantitative evidence. Employers or service providers will also be subject to the more stringent test, that it should be “*a proportionate means of achieving a legitimate aim*”. This in turn will impact on the success rate of cases in court, as well as the number going to court.

4.37 Data on compensation and success at county court are not available. However, in the case of employment tribunals, even a small increase of 2% in the number of successful claims of racial (including nationality and colour) discrimination would lead to benefits in the form of additional compensation. According to SETA (Survey of Employment Tribunal Applications) 2003, the median amount awarded in discrimination cases was £3,175.<sup>19</sup> Claimants in this instance could

<sup>18</sup> The changes in respect of goods, facilities, services and premises will be made through regulations implementing the Gender Directive.

<sup>19</sup> DTI Employment Relations Research Series No.33: ‘Findings from the Survey of Employment Tribunal Applications 2003’ Table 8.14.  
<http://www.dti.gov.uk/files/file11455.pdf?pubpdfdownload=04%2F1071>

around £196,000.<sup>20</sup> This will be a direct transfer from employers to claimants (and is therefore shown as a cost to employers below). We might expect to see similar benefits/costs from a small increase in sex cases relating to the provision of goods, facilities and services.

## Costs

### **Option 1: do nothing**

4.38 There would be no additional costs of doing nothing in terms of cases going to court or employment tribunals.

### **Option 2: standardisation (recommended)**

4.39 The common feature of the three proposed changes is that they slightly widen the scope for the number of cases of discrimination that go to court or an employment tribunal. If, as a result, there were an extra 4–6 sex discrimination cases in goods, facilities and services in the county courts, this would cost the courts £4,044–£6,066<sup>21</sup>. There may also be similar costs for nationality and colour cases giving a total for both of between £8,088 and £12,132. A 2–5% increase in employment tribunal claims in race discrimination (of which nationality and colour are part) would cost employers £292,000–£731,000, taxpayers £56,000–£140,000 and claimants £72,000–£180,000.<sup>22</sup>

4.40 A more flexible test will affect the success rate of cases in court, as well as the number going to court. As indicated in para 4.37, we estimate that claimants might expect to gain £196,000 if race cases increased by 2% – a direct cost to employers. We might expect to see similar benefits/costs from a small increase in sex cases relating to provision of goods, facilities and services.

## Victimisation

4.41 The proposal is to put discrimination law on the same basis as employment law: a person claiming victimisation as a result of e.g. bringing a discrimination case against an employer/service provider will not have to identify a comparator but will need to show that he or she has suffered a detriment as a result of bringing the case.

<sup>20</sup> Calculation:  $(3079 \times 0.02) \times £3,175$ .

<sup>21</sup> Based on the assumption that a case costs £1,011. See Annex B, para 15. These are judicial costs of running a court and fall to either the taxpayer or those for whom judgement is not in favour. They do not include costs of advice or representation, or time spent on a case.

<sup>22</sup> Based on the assumption that the average cost of an employment tribunal case is £4,746 for employers, £910 to the taxpayer and £1,171 for a claimant. See Annex A, paras 4-6.

4.42 Costs and benefits of this proposal are considered to be negligible and therefore are not considered in greater detail here.

<b>Table 4: Costs and benefits of simplifying and standardising definitions and concepts*</b>									
<b>Option 1: do nothing – No significant quantifiable costs and benefits (para 4.34 and 4.38)</b>									
<b>Option 2 (recommended): simplification and standardisation where necessary but adopting a different approach where justified</b>									
	<b>COSTS £m</b>					<b>BENEFITS £m</b>			
	One-off		Recurring			One-off		Recurring	
	Low Est	High Est	Low Est	High Est		Low Est	High Est	Low Est	High Est
<b>Public Sector</b>									
Court Costs (para 4.39)			0.008	0.012	Clearer guidance (para 4.26)			0.46	0.54
Tribunal Costs (para 4.39)			0.056	0.140					
Familiarisation costs (table 3)	1.61	1.61							
<b>Private Sector</b>									
Compensation Costs (para 4.40)			0.392	0.392	Clearer guidance (para 4.26)			0.46	0.54
Tribunal Costs			0.292	0.731					
Familiarisation costs (table 3)	8.36	8.36							
<b>Individuals</b>									
Tribunal Costs			0.072	0.18	Compensation awards (para 4.37)			0.196	0.196
<b>TOTALS</b>									
<b>TOTAL COSTS</b>	<b>9.97</b>	<b>9.97</b>	<b>0.82</b>	<b>1.455</b>	<b>TOTAL BENEFITS</b>			<b>1.116</b>	<b>1.276</b>

\* This table only includes quantifiable costs and benefits. It does not take account of non-quantifiable costs and benefits indicated in paragraphs 4.30 – 4.42.

## Measure (b): rationalising exceptions allowing discrimination

- 4.43 This proposal relates more to the *treatment* than the *coverage* of exceptions – there are no proposals to change radically the exceptions already allowed.
- 4.44 The main proposal is to replace the existing *genuine occupational qualifications* in respect of sex and race (nationality and colour) with the *genuine occupational requirement* test that already applies in other equality strands; and to keep specific identified exceptions as appropriate.

## Benefits of rationalising the treatment of exceptions

### Option 1: do nothing

- 4.45 There would be no additional benefits from doing nothing.

### Option 2 (recommended): apply the *genuine occupational requirement* test consistently across all strands, keeping specific exceptions where appropriate

- 4.46 Extending the (wider) genuine occupational requirement test to sex and race (nationality and colour) will enable an employer to justify discriminatory acts in a way that was not possible before in those areas.
- 4.47 While we might see an initial increase in the number of cases, the new test is likely, if anything, to result in greater success for employers. In time, we expect this to lead to a slight fall in the number of cases and hence some small savings as indicated below.

### *Outcome of employment tribunal cases: quantified estimates of savings*

- 4.48 Annex A (Table 15) shows that there have been an average of just over 10,000 cases per year where sex discrimination was the main complaint. For illustrative purposes, if the introduction of the test led to employers being successful (instead of the claimant) in an extra 0.5% of cases, there would be corresponding savings for the employer in not having to pay compensation. According to SETA (Survey of Employment Tribunal Applications) 2003, the median amount awarded in discrimination cases at tribunals was £3,175.<sup>23</sup> Employers in this instance could therefore save, in total, around £158,000.<sup>24</sup> We could expect to see similar savings in a small number of race discrimination cases at tribunals too.

<sup>23</sup> See footnote 19.

<sup>24</sup> Calculation:  $(3,079 \times 0.05) \times £10,139$ .

### *Reduction of cases: quantified estimates of savings*

- 4.49 Table 16 in Annex A estimates that approximately 63,000–84,000 justiciable events in sex discrimination occur per annum. If extending the general justification test to sex discrimination reduced the proportion of such events leading to tribunal by 0.01 per cent, we would see a reduction of approximately 6–8 tribunal cases per annum. If we take the average cost of a case to be £4,746 for the employer and £910 for the taxpayer (Annex A, paras 4 and 5), both groups would see savings of approximately £30,000–£40,000 and £5000 and £7000 respectively. Claimants would save approximately £7,026–£9,368 (based on average cost to claimant of £1,171, Annex A, para 6).
- 4.50 In the case of race discrimination, Table 16 in Annex A estimates there to be 19,000–26,000 justiciable events. These figures do not distinguish events involving nationality and colour (to which the proposal relates) but it is assumed that they constitute only a marginal proportion. On this basis, if extending the general justification test to discrimination on grounds of colour or nationality also reduced the proportion of justiciable events leading to tribunal by 0.01 per cent, there would be a reduction of 2–3 tribunal cases per annum. This could save employers £9,500–£14,200 and the taxpayer £1,820–£2730 per year. Claimants would save approximately £2,342–£3,513.
- 4.51 Therefore, total estimated annual recurring savings from potential changes in outcome and reductions of employment tribunal cases are as follows:
- for employers (public and private sector): £316,000 (para 4.48) + £40,000–£54,000 (paras 4.49 and 4.50) = £356,000–£370,000
  - for individuals (claimants): £9,368–£12,881 (paras 4.49 and 4.50) but offset by losses of £316,000 (para 4.48)
  - for society (taxpayer): £6,820–£9,730 (paras 4.49 & 4.50)

### **Option 3: apply the *genuine occupational requirement* test in all discrimination strands and remove all specific exceptions**

- 4.52 Removing all specific exceptions, including those which provide legal certainty, could potentially increase the number of cases significantly. Therefore there are no expected net benefits from this option.

## Costs of rationalising the treatment of exceptions

### **Option 1: do nothing**

4.53 There would be no additional employment tribunal cases. However, there could be costs to employers arising from uncertainty (and the need to seek advice) caused by ongoing inconsistency.

### **Option 2 (recommended): apply the *genuine occupational requirement* test consistently across all strands, keeping specific exceptions where appropriate**

4.54 There are no significant costs.

### **Option 3: apply the *genuine occupational requirement* test in all discrimination strands and remove all specific exceptions**

4.55 Removing the specific exceptions is likely to significantly increase the number of claims to employment tribunals

**Table 5: Costs and benefits of rationalising the treatment of exceptions (employment)\***

**Option 1: do nothing – No significant quantifiable costs and benefits (para 4.45 and 4.53)**

**Option 2 (recommended): keeping existing specific exceptions and apply the genuine occupational requirement test across all strands**

	COSTS £m					BENEFITS £m			
	One-off		Recurring			One-off		Recurring	
	Low Est	High Est	Low Est	High Est		Low Est	High Est	Low Est	High Est
<b>Public Sector</b>									
Familiarisation costs (table 3)	1.61	1.61			Savings from winning more cases (para 4.51)			0.178	0.185
					Clearer guidance (para 4.26)			0.46	0.54
<b>Private Sector</b>									
Familiarisation costs (table 3)	8.36	8.36			Savings from winning more cases (para 4.51)			0.178	0.185
					Clearer guidance (para 4.26)			0.46	0.54
<b>Individuals</b>									
Could lose more cases (para 4.51)			0.316	0.316	Fewer cases (para 4.51)			0.009	0.013
<b>Society</b>									
					Fewer cases (para 4.51)			0.007	0.010
<b>TOTALS</b>									
<b>TOTAL COSTS</b>	<b>9.97</b>	<b>9.97</b>	<b>0.316</b>	<b>0.316</b>	<b>TOTAL BENEFITS</b>			<b>1.292</b>	<b>1.473</b>

**Option 3: apply genuine occupational requirement test in all discrimination strands and remove all specific exceptions** – Costs and benefits the same as in option 2 but significant difference in non quantifiable costs and benefits (para 4.52 and 4.55).

\* This table only includes quantifiable costs and benefits. It does not take account of non-quantifiable costs and benefits indicated in paragraphs 4.43 – 4.55.

## Measure (c): incorporate updated equal pay provisions into a single piece of legislation

- 4.56 Currently, British law on pay-related discrimination between women and men is covered by two separate Acts which use different concepts and procedures and have different remedies.
- 4.57 Claims for equal pay (more specifically, equal pay for work of equal value) can be complex, time-consuming and therefore costly for business and individuals. The mass of domestic and European case law can make it difficult for people to know their rights and responsibilities, and legal expertise and support is usually essential when claims are brought to tribunals. The Government believes there is potential to streamline the law, making it less confusing for employers and employees.

### Benefits of simplifying equal pay provisions

#### **Option 1: do nothing**

- 4.58 Employers will be familiar with the current, albeit complicated, system and will not need to adjust to change.

#### **Option 2 (recommended): incorporate equal pay provisions along with sex discrimination provisions within a single piece of legislation (the Single Equality Bill), replicating the existing contract-based approach of the Equal Pay Act and the tort-based approach of the Sex Discrimination Act but also reflecting key decisions in equal pay case law.**

- 4.59 This option would remove current confusion for employers and individuals, with associated savings when bringing or defending an equal pay case. Clearer law that is potentially less subject to appeal could speed up resolution of equal pay cases with concomitant cost savings.<sup>25</sup> By reflecting current case law, certainty will be maintained. Maintaining the contract-based approach to equal pay will ensure that the claimant's continuing entitlement to equal pay is legally certain.

<sup>25</sup> As an illustration of potential savings, if the average cost of an employment tribunal discrimination case is £4,746 to the employer (excluding awards) and £910 to the taxpayer (see Annex A, paras 4 and 5), then the overall benefit of even a decrease of 1% in costs of equal pay and sex discrimination cases would amount to £700,000 for business and £140,000 for the Exchequer.

**Option 3: deal with equal pay in a Single Equality Bill as a form of sex discrimination, using the tort-based approach of the Sex Discrimination Act.**

4.60 The main benefit of this option would be to make it easier for individuals and employers to follow a single set of procedures.

## Costs of simplifying equal pay provisions

### Option 1: do nothing

4.61 Individuals might continue to bring claims under the wrong Act, therefore wasting time and money. In addition, existing case law contains conflicting judgements which lead to large numbers of appeals and associated costs.

**Option 2 (recommended): incorporate equal pay provisions along with sex discrimination provisions within a single piece of legislation (the Single Equality Bill), replicating the existing contract-based approach of the Equal Pay Act and the tort-based approach of the Sex Discrimination Act but also reflecting key decisions in equal pay case law.**

4.62 There will be one-off familiarisation costs.

**Option 3: deal with equal pay in a Single Equality Bill as a form of sex discrimination, using the tort-based approach of the Sex Discrimination Act.**

4.63 There will be one-off familiarisation costs. The cost impact is likely to be much greater than for option 2, because this change is much more radical. Links with current equal pay case law would be obscured, possibly resulting in a whole new round of test cases and appeals, with increased associated costs. This option could also lead to the use of hypothetical comparators in equal pay cases, which may subsequently raise the cost of processing claims.

4.64 Depending on the factors of the case, paying damages for injury to feelings alone could cost the public sector (and benefit individuals by) some £55.83m. This figure assumes an award of £15,000<sup>26</sup> for injury to feelings (per claim) and 3,722 claims successful at tribunal in 2005/06.

<sup>26</sup> In *Vento v Chief Constable of West Yorkshire Police (No 2)* [2003] EWCA CIV 1871 the Court of Appeal set out three bands of awards to guide tribunals in discrimination cases. £15,000 is the top end of the middle band. The top end of the higher band is £25,000 and conscious pay discrimination would be likely to fall into this.

<b>Table 6: Costs and benefits of equal pay options</b>									
<b>Option 1: do nothing – No significant quantifiable costs and benefits (para 4.58 and 4.61)</b>									
<b>Option 2 (recommended): incorporate equal pay provisions within a single piece of legislation along with the sex discrimination provisions, replicating the contract-based approach of the Equal Pay Act and the tort-based approach of the Sex Discrimination act.</b>									
	<b>COSTS £m</b>					<b>BENEFITS £m</b>			
	One-off		Recurring			One-off		Recurring	
	Low Est	High Est	Low Est	High Est		Low Est	High Est	Low Est	High Est
<b>Public Sector</b>									
Familiarisation costs (table 3)	1.61	1.61			Clearer guidance (para 4.26)			0.46	0.54
<b>Private Sector</b>									
Familiarisation costs (table 3)	8.36	8.36			Clearer guidance (para 4.26)			0.46	0.54
<b>TOTALS</b>									
<b>TOTAL COSTS</b>	<b>9.97</b>	<b>9.97</b>			<b>TOTAL BENEFITS</b>			<b>0.92</b>	<b>1.08</b>

**Table 6: Costs and benefits of equal pay options (continued)****Option 3: deal with equal pay as a form of sex discrimination, using the approach in the Sex Discrimination Act.**

<b>Public Sector</b>									
Familiarisation costs (table 3)	Likely to be higher than option 2 – 1.61								
Court cases			Increase in test cases and appeals leading to higher costs						
Compensation costs (para 4.64)	55.83	55.83							
<b>Private Sector</b>									
Familiarisation costs (table 3)	Likely to be higher than option 2 – 8.36								
Court cases (para 4.64)			Increase in test cases and appeals leading to higher costs						
Compensation costs (para 4.64)	Likely to exceed options 1 and 2								
<b>Individuals</b>									
Entitlement (para 4.64)	There would be less certainty of entitlement to equal pay				Compensation (para 4.64)	55.83	55.83		
<b>TOTALS</b>									
<b>TOTAL COSTS</b>	<b>66.7</b>	<b>66.7</b>			<b>TOTAL BENEFITS</b>	<b>55.83</b>	<b>55.83</b>		

\* This table only includes quantifiable costs and benefits. It does not take account of non-quantifiable costs and benefits indicated in paragraphs 4.56 to 4.64.

## Measure (d): simplifying the Disability Discrimination Act

4.65 The proposed measures are to:

- (i) remove the list of ‘capacities’ from the definition of disability;
- (ii) introduce a single definition of discrimination across Part 3 of the Disability Discrimination Act;
- (iii) introduce a single threshold as the trigger for making reasonable adjustments (the ‘substantial disadvantage’ test);
- (iv) simplify the range of justifications for potentially discriminatory acts in Parts 2 and 3, replacing them with the ‘objective justification’ test – that the act in question is a ‘proportionate means of achieving a legitimate aim’.

### Sectors and groups affected

4.66 These measures affect all groups and sectors covered by the Disability Discrimination Act.

### Individual elements of simplifying the Disability Discrimination Act

#### *(i) Remove the list of capacities from the definition of disability*

4.67 We intend to simplify how the definition of disability operates in relation to “normal day-to-day activities”. The Act does not define normal day-to-day activities, but requires that one or more of a number of factors must be affected, including mobility, manual dexterity, speech, hearing and eyesight, which are referred to in Statutory Guidance<sup>27</sup> as ‘capacities’. This requirement was included in the Act in 1995 as there were concerns that, otherwise, the protection of the Act would be too wide-reaching. In practice, this concern has proved unfounded.

<sup>27</sup> ‘Guidance on matters to be taken into account in determining questions relating to the definition of disability’, issued by the Department for Work and Pensions on 29 March 2006, came into force May 2006.

4.68 There is also evidence of confusion about the purpose of the list of ‘capacities’, and it has often incorrectly been described as a list of normal day-to-day activities. Furthermore, it has sometimes proved difficult for some people, particularly those with some mental impairments, to show how their impairment affects one of the ‘capacities’.

***(ii) Introduce a single definition of discrimination***

4.69 Part 3 of the Act has a separate definition of discrimination for each of the sections covering goods, facilities and services, premises, public authorities and private clubs. This makes the legislation complex and difficult to follow. The Government is therefore considering whether it would be possible to replace the separate definitions with a single definition.

***(iii) Introduce the ‘substantial disadvantage’ test as the trigger for making reasonable adjustments***

4.70 The duty to make adjustments, which is one of the cornerstones of the Disability Discrimination Act, features prominently in all parts of the Act. However, the circumstances in which the duty arises, also known as the ‘threshold’, differ according to which field is concerned: employment, goods, facilities and services etc or education.

4.71 We believe that a single threshold at which the duty to make reasonable adjustments is triggered would make it easier for disabled people, employers and service providers to understand their rights and responsibilities. We therefore propose a single threshold for the point at which the duty to make adjustments is triggered, based on the lower threshold described above, namely, the ‘substantial disadvantage’ test.

***(iv) Introduce ‘objective justification’ for Parts 2 and 3 of the Disability Discrimination Act***

4.72 We propose that all the different justifications should be replaced with the same objective justification test which is used to justify indirect discrimination in other discrimination legislation, namely that the act in question is a proportionate means of achieving a legitimate aim.

4.73 We consider that a single test of objective justification for disability discrimination would be easier to understand, and would continue to strike a fair balance between the rights of disabled people not to be discriminated against and the need for employers and service providers to be able to operate their businesses sensibly.

## Options for simplifying the Disability Discrimination Act

4.74 Three options are considered:

- Option 1: do nothing: keep the Act as it is.
- Option 2: (recommended): simplify the Act and align it with the other anti-discrimination laws:
  - remove the list of ‘capacities’ from the definition of disability;
  - introduce a single definition of discrimination across Part 3;
  - introduce a single threshold as trigger to make reasonable adjustments (the ‘substantial disadvantage’ test);
  - simplify the range of justifications for potentially discriminatory acts in Parts 2 and 3.
- Option 3: simplify the Act, but with no change to the justification defences for less favourable treatment (in Parts 2 and 3 of the Act) or failure to make a reasonable adjustment (in Part 3 only).

**Option 1: do nothing: keep the Disability Discrimination Act as it is.**

4.75 No additional costs.

**Option 2 (recommended): introduce all the changes indicated**

### Costs

#### *(i) Remove the list of capacities from the definition of disability*

4.76 This will make it easier for individuals with some types of impairments to prove they meet the definition of disability. There will be a small cost from a small number of additional cases reaching courts or tribunals. If the number of cases increased between 2% and 5% the total cost would be £306,000 to £767,000. These costs are broken down below in Table 7.

**Table 7: Costs arising from increases of 2% and 5% in employment tribunal and county court cases relating to disability discrimination**

	2% increase	5% increase
<b>Tribunal costs</b>		
To employers	£212,000	£529,000
To taxpayers	£41,000	£101,000
To claimants	£52,000	£130,000
<b>Court costs</b>	£1,000	£7,000
Note: Costs are based on figures provided by DTI and Her Majesty's Courts Service as in Annex A and Annex B and are rounded to the nearest £1,000		

***(ii) Introduce a single definition of discrimination in Part 3 of the Disability Discrimination Act***

4.77 This measure is intended to simply remove the complexities in the current legislation whilst retaining coverage against disability discrimination. The costs, are considered to be negligible. It is unlikely this change will have an impact on the number of court or tribunal cases taken.

***(iii) Introduce the 'substantial disadvantage' test as the trigger for making reasonable adjustments***

4.78 It will also mean that service providers will have to make more adjustments. Assuming that this change will increase the number of reasonable adjustments by between 1% and 3%, the annual cost will be between £2million and £6million, based on the average cost of adjustments<sup>28</sup>. It is expected that adjustments made after this change but that would not previously have been made would be more minor and therefore lower cost. This cost therefore represents the maximum expected effect.

***(iv) Introduce 'objective justification' for Parts 2 and 3 of the Disability Discrimination Act***

4.79 This measure widens the existing grounds on which discrimination might be justified. However, it is a difficult test to satisfy. It is therefore considered that it will be cost neutral.

<sup>28</sup> Based on 'Disability Discrimination Act – Access to Goods, Services and Facilities – Regulatory Impact Assessment', Department for Work and Pensions, 2004.

## Benefits

4.80 The main impact will be to simplify the Act, making it easier to understand and comply with the duties, without detracting from the level of protection for disabled people. Improved understanding on behalf of those with duties should reduce the level of unintentional discrimination. Aligning the Act with other anti-discrimination legislation should also help those with duties to understand them and respond appropriately.

4.81 This may mean that fewer cases have to go as far as a court or tribunal hearing and informal dispute resolution mechanisms may be more likely to result in satisfactory outcomes. Where cases do go to court or tribunal they should take less time to reach a conclusion. This saving in court and tribunal costs will balance out the possibility of more cases being taken for the reasons outlined in the costs section above.

### *(i) Remove the list of capacities from the definition of disability*

4.82 This will reduce potential for confusion in the operation of the definition of disability and make it easier for individuals with some types of impairments, such as some mental health conditions, to prove they meet the definition of disability. This will result in a fairer and simpler process.

### *(ii) Introduce a single definition of discrimination*

4.83 Disabled people will have more consistent coverage from the Disability Discrimination Act, which will be easier to understand. They will be less likely to be discriminated against because those with duties under that Act have not properly understood their duties. Where they do face discrimination, it will be easier to enforce and articulate their rights.

### *(iii) Introduce the 'substantial disadvantage' test as the trigger for making reasonable adjustments (see also measure (l) below regarding premises provisions)*

4.84 This will result in an increase in the number of reasonable adjustments being made by service providers, giving disabled people the opportunity to access a wider range of facilities and services.

4.85 Businesses will also benefit in terms of increased custom from disabled people and others. Improved public image could increase business opportunities.

- 4.86 Improved access will enable disabled people and others to use services that were previously unavailable to them, or they will be better able to use currently available services, and more safely. The social, business and personal value of this is impossible to quantify.
- 4.87 It is expected that these benefits to disabled people, business and society will outweigh the actual cost of the adjustments being made.

*(iv) Introduce 'objective justification' for Parts 2 and 3 of the Act*

- 4.88 This would align the Act's justifications regime more closely with other anti-discrimination law, making it less complex and easier to understand.

**Part 2 of the Act – the employment field**

- 4.89 This will introduce a stricter justification test and will thus enhance rights for disabled people.

**Part 3 of the Act – goods, facilities, services, public functions, private clubs and premises**

- 4.90 The new justification test, both for less favourable treatment and for failure to make a reasonable adjustment, would give service providers etc a wider range of circumstances in which they could justify discrimination. However, the need to show 'proportionality' is a considerably stricter test than the subjective ('reasonable opinion') part of the current justification tests. So a test of objective justification, while widening the circumstances in which discrimination can be justified, also makes it harder to justify discrimination.

**Option 3**

**Make fewer changes: simplify the Disability Discrimination Act by making the changes described in option 2, but with no change to the justification defences for Parts 2 and 3 of the Act.**

- 4.91 Option 3 will bring similar but lower overall benefits for disabled people, business and society compared with the fuller simplification and alignment contained in option 2. The costs and benefits of the measures included in option 3 are the same as for option 2, but without those carried by the change proposed for the justifications regime.
- 4.92 As the benefits of option 3 are clearly lower than option 2, the Government is minded to accept option 2.

## Objective (ii): making the law more effective

### Measure (e): widening the scope of voluntary “positive actions” within existing EU parameters

- 4.93 The term “positive action” describes voluntary measures designed to give special support to under-represented groups in order to counter the effects of historical discrimination, prevent future discrimination and provide a level playing field.
- 4.94 “Positive action” must be distinguished from “positive discrimination” which is unlawful in the UK and EU (except in relation to disability). “Positive discrimination” in employment (e.g. recruitment or promotion) generally means favouring a person from a particular under-represented group *solely because he/she comes from that group*, rather than on merit.
- 4.95 Current British legislation contains a number of positive action provisions, mainly in the employment field and generally quite narrow in scope. All are permissive, not obligatory.
- 4.96 These “positive actions” in domestic legislation all fall within the range of measures permitted under EU law but they are relatively limited and do not exhaust what EU law would permit. European case law has established that the EU Directives would allow a wider range of measures to achieve equality for the groups in question. This could significantly improve opportunities for groups under-represented in the workforce.
- 4.97 There is also more scope for positive action outside employment, building on existing provisions of the Race Relations Act (extended to religion and belief under Part 2 of the Equality Act 2006 and sexual orientation by the Equality Act (Sexual Orientation) Regulations 2007) which cater for the special educational, training and welfare needs of relevant groups.

### *Reasonable adjustments in disability discrimination law*

- 4.98 Employers and service providers such as owners of shops and restaurants must make “reasonable adjustments” (for example, fitting a wheelchair ramp) to enable disabled people to gain access to the same opportunities or facilities as are available to those who are not disabled.
- 4.99 There is no such requirement for the other equality strands (sex, race, sexual orientation, religion or belief, age). There have been suggestions that the Government should extend the concept of “reasonable adjustments” to those other strands as well.

## Benefits

### **Option 1: do nothing**

4.100 No new benefits, and a lost opportunity for businesses to draw on more talent, increase productivity and widen their market opportunities.

### **Option 2 (recommended): extending the range of voluntary positive actions as wide as is permitted under EU legislation**

4.101 This would allow a wider range of actions to address disadvantage and under-representation, especially in the workforce, for the groups concerned. Employers would have a freer hand than at present to improve opportunities for specific groups. This could significantly improve opportunities for under-represented groups, particularly in organisations that wish to make faster progress than is possible at present.

4.102 Firms and public authorities would be able to maximise the potential of their staff, increase workforce satisfaction, achieve greater productivity through greater efficiency in use of resources and increase their responsiveness to their customers and communities through employing staff who are more representative. There could be reputational gains for firms. Individuals in the groups affected should have better employment and promotion opportunities and will benefit from services designed to address their special needs.

### **Option 3: in addition, extending the concept of “reasonable adjustments” so that it applies in all the equality strands, as well as disability.**

4.103 There would be no measurable benefits from applying reasonable adjustments across all strands. Instead, there would be substantial additional and unpredictable burdens on business (see below).

## Costs

### **Option 1: do nothing**

4.104 An opportunity cost from failing to draw on the full range of talents.

### **Option 2 (recommended): extending the range of voluntary positive actions as wide as is permitted under EU legislation**

4.105 Since these would be voluntary measures there would be no mandatory additional costs.

**Option 3. in addition, extending the concept of “reasonable adjustments” so that it applies in all the equality strands, as well as disability.**

4.106 There would be significant set-up and ongoing costs. There would also be an increased risk of confusion since in some cases firms might face claims both for indirect discrimination and for failure to make reasonable adjustments. Similar cost increases would apply to public authorities delivering public functions and services.

<b>Table 8: Costs and benefits of a wider scope for positive action*</b>									
<b>Option 1: do nothing – No significant quantifiable costs and benefits (para 4.100 and 4.104)</b>									
<b>Option 2 (recommended): widening the scope of voluntary positive action</b>									
	<b>COSTS £m</b>					<b>BENEFITS £m</b>			
	One-off		Recurring			One-off		Recurring	
	Low Est	High Est	Low Est	High Est		Low Est	High Est	Low Est	High Est
<b>Public Sector</b>									
Familiarisation costs (table 3)	1.61	1.61							
<b>Private Sector</b>									
Familiarisation costs (table 3)	8.36	8.36							
<b>TOTALS</b>									
<b>TOTAL COSTS</b>	<b>9.97</b>	<b>9.97</b>			<b>TOTAL BENEFITS</b>				
<b>Option 3: applying ‘reasonable adjustments’ across the board – Costs and benefits not yet quantified but costs expected to be significantly more than option 2 (para 4.103 and 4.106).</b>									

\* This table only includes quantifiable costs and benefits. It does not take account of non-quantifiable costs and benefits indicated in paragraphs 4.93 to 4.106.

**Measure (f): creating an integrated duty on public authorities to promote equality across all protected areas of discrimination law (race; gender including gender reassignment; disability; religion or belief; sexual orientation; age)**

- 4.107 Public sector duties have a potentially substantial social and economic impact because they cover all key public sector bodies, including central and local government, the NHS, the education sector, most non-departmental public bodies and others – some 28,000 in all. They require public authorities to proactively promote equality as well as acting to prevent discrimination.
- 4.108 The first public sector duty was the duty to promote equality and good relations in respect of race (the “race duty”), introduced in 2002. The Government introduced the “disability duty” in December 2006 and the “gender duty” in April 2007.
- 4.109 Each of the equality duties requires public bodies to prepare and publish schemes outlining how each of the duties will be met, with a requirement to publish annually progress against each of the duties. There is also a requirement to revise each of the schemes at least every three years which means public bodies are currently reporting and revising their schemes at different times due to the different timescales for reporting on each duty.
- 4.110 One of the advantages of an integrated duty is that it avoids skewing public authority resources and priorities towards meeting a particular legislative obligation when the demands of the local community may require different priorities. An integrated duty could provide similar protection for the remaining protected grounds i.e. sexual orientation; religion or belief and age. A number of local authorities are already operating integrated schemes providing equality of opportunity across all the discrimination grounds
- 4.111 The establishment of an integrated duty, whether covering the three grounds currently covered or extended to all six grounds, also provides an opportunity to revisit the structure of the existing duties and, in particular, to ensure that the future arrangements focus on outcomes.

## Options

**Option 1:** do nothing. Retain the existing public-sector duties but do not extend to the new strands.

**Option 2a:** integrate the three existing duties to create a single duty covering race, disability and gender, using the current approach.

**Option 2b:** establish an integrated duty for race, disability and gender, based on the new approach.

**Option 3:** establish an integrated duty for all protected grounds, based on a new approach. This would be likely to involve a general duty requiring public authorities to take action towards the achievement of equality; and key principles to help authorities achieve that goal e.g. transparency; involvement and consultation, etc. We estimate that an integrated duty based on this approach could cost 10 per cent less than an integrated duty across all protected grounds based on the current approach used in the gender duty, with greater benefits from being focused more strongly on outcomes.

- 4.112 Under Options 2b and 3, the duties would be geared more closely to generic measures of progress, to achieve the desired outcome. It would be necessary to consider amending the specific duties for the existing grounds (gender, disability, race) to ensure consistency, and whether to retain distinct features where these were justified.
- 4.113 The practical results of this approach would be to minimise formal procedures and concentrate on outcomes for service users and employees of public authorities, focusing on the necessary and proportionate actions and reporting on their impact on the ground.
- 4.114 While some estimates are given below in relation to the costs/benefits of introducing an integrated duty, a detailed assessment of the proposals relating to an integrated public sector duty will be contained in the revised Regulatory Impact Assessment after the consultation period.

## Costs and benefits of an integrated public sector duty

### *Sectors affected*

4.115 We identify approximately 27,840 public bodies that would be affected by an integrated public sector duty. The proposals under options 2a, 2b and 3 above would affect a similar number of authorities.

<b>Detailed breakdown of public authorities<sup>29</sup></b>	
	<b>Number</b>
Central government	70
Local authorities, Strategic Health Authorities, Special Health Authorities, Health Boards (Scot), Special Health Boards (Scot), Royal Colleges.	502
Schools	25,229
Higher education institutions	152
Further education institutions	431
Primary Care trusts, Acute Trusts, other NHS Trusts	421
Police Forces, Prison Services, Exec Justice Department, Nationalised Industries, Probation Boards, Inspectorates	122
Public Bodies sponsored by UK Govt Departments <sup>30</sup>	913
<b>Total</b>	<b>27,840</b>
Sources: Office for National Statistics, the Employers' Organisation for Local Government, the Department for Education and Skills and the Department of Health, the Scottish Executive and the Cabinet Office.	

4.116 Most of the costs of option 2a are likely to arise from the specific duties on public authorities. Those duties would be developed following consultation, so it is not possible at this stage to detail how public bodies would be affected by our proposals. In broad terms, option 2a would be likely to contain similar specific duties for the existing grounds; whilst options 2b and 3 propose a new approach with key principles generally applying across the grounds covered.

<sup>29</sup> As the public sector duty proposals affect a range of public sector organisations, and since the reconfiguration of a number of public sector authorities, we have grouped various bodies together where they are organisations of a similar size, employ similar numbers of people or where their functions are similar. A more detailed assessment of the types of bodies and how they will be affected by the public sector duty proposals will be contained in the final Regulatory Impact Assessment.

<sup>30</sup> Consists of 199 Executive Non-Departmental Public Bodies, 448 Advisory Non-Departmental Public Bodies, 40 Tribunal Non-Departmental Public Bodies, 149 Monitoring Bodies, 21 Public Corporations, the Bank of England, 2 Public Broadcasting Authorities and 23 NHS Bodies (info taken from Cabinet Office Public Bodies 2006 report).

4.117 Consideration has been given to alternative ways in which the public sector equality duty would be applied. However, as discussed in Chapter 5 of the consultation document, it is unclear how this could be achieved effectively and we are seeking views on whether this is an appropriate approach to take and if so, how. As there are currently no preferred options available for targeting the duty, we have not assessed the costs and benefits of approaches in this Regulatory Impact Assessment.

### **Benefits of an integrated public sector duty**

- 4.118 Under options 2a and 2b the general public duties for race, disability and gender would be integrated into a single duty. Under option 3, this duty would be extended to cover sexual orientation, age and religion/belief.
- 4.119 The benefits will in part depend upon the specific duties or strategic equality objectives and key principles that are subsequently framed for the existing and new protected grounds. But they could encourage more openness and transparency in policy-making and help embed equality in employment practices and service delivery enabling public authority employers to achieve a more balanced workforce and strengthen their ability to hire, retain and motivate staff. Better job matching and development of employee skills should help raise productivity and consumers of public services would benefit from a more responsive service. It is not possible to quantify these benefits precisely at this stage, but they make an important contribution to the figure in Table 1 showing the general benefits of the proposals.
- 4.120 Public authorities should also be able to benefit from rationalising resources and processes by developing a global action plan to demonstrate compliance with an integrated duty, rather than being required to comply with three separate duties. The ongoing benefits of having an integrated rather than three separate duties are estimated at 46.1m to 61m per year.
- 4.121 The benefits of option 3 for customers of public authorities are likely to be positively related to the potential population size for each of the new grounds. The age provisions will provide protection across the age spectrum, but the major benefits are likely to fall to older people. With around 19% of the UK population being above State pension age and projections indicating that the proportion is set to grow, the potential benefits from incorporating age in an integrated public sector duty are significant.

- 4.122 Available evidence suggests that around 5-7% of the population are lesbian, gay or bisexual<sup>31</sup>, so here again the benefits are potentially large.
- 4.123 The religion or belief provisions will protect people of any religion or none, but the main benefits are likely to fall to minority faiths. The 2001 Census indicated that around 5.4% of the UK population described themselves as being of a religion other than Christian, implying the benefits from the religion strand could also potentially be sizeable.
- 4.124 The number of transsexual people is small (around 5,000 in the UK), so the overall benefits here are likely to be low – although they will remain important for the individuals affected.

## Costs of an integrated public sector duty

### *Implementation costs*

- 4.125 There will be set-up costs from the establishment of a new integrated duty. Detailed cost estimates for the implementation of our proposals will be made once the consultation period is over and we are clear on what our final proposals will be.

### *Costs for the Commission for Equality and Human Rights*

- 4.126 As a guide, the Regulatory Impact Assessment for the public sector gender duty estimated that it would cost the Commission for Equality and Human Rights between £415,000 and £655,000 to implement the new duty. Over 85 per cent of this total will consist of staffing costs, the remainder reflects the approximate cost of consultation and publishing information.
- 4.127 Options 2a and 2b envisage integrating the three existing duties into a single duty. Option 3 envisages widening the general duty to three further grounds in an integrated duty. The initial implementation costs to the Commission for Equality and Human Rights are unlikely to be three times as high as for the gender duty, because there are likely to be economies of scale.

<sup>31</sup> Equalities Review: Interim Report for Consultation, March 2006.

### ***Costs to public authorities: one-off***

- 4.128 There will also be one-off costs to public authorities implementing the duties, largely consisting of the employee time spent reading and drawing up schemes/action plans in response to the requirements of the new duty. Applying a methodology consistent with that of the Regulatory Impact Assessment for the public sector gender duty, but re-estimating to take account of new information on numbers of public bodies, and new information on how long it takes for public bodies to comply with the current duties, the total one-off cost of the gender duty to the public sector (including the cost to the Commission for Equality and Human Rights) is between £19.1 million and £37.1 million.
- 4.129 Using the costs in the gender duty Regulatory Impact Assessment as a guide (but adjusting for the new information), it is plausible that the one-off implementation costs under option 2a may lie in the region of £29.4m to £57.3m and under 2b, £26.5m to £51.5m<sup>32</sup>. One-off implementation costs under option 3 may lie in the range £44.1m to £85.9m<sup>33</sup>.

### ***Costs to public authorities – ongoing***

- 4.130 There will also be ongoing implementation costs to public authorities from a new integrated duty covering three or six grounds (options 2a, 2b and 3). These costs may arise from requirements to consult and involve employees and service users and to gather and consider data, although the exact nature will depend upon the structure and requirements of the new duties. Costs may also arise from central government and local authorities commissioning surveys/research to inform their action plans.
- 4.131 Updating the estimates from the Regulatory Impact Assessment on the public sector gender duty, we estimated ongoing costs to the public sector of the gender duty at £18.2m to £26.7m. A detailed assessment

<sup>32</sup> This assumes the costs under option 2a would be around 1.5 times the costs estimated for the gender duty before allowing for earnings inflation concerning the data used in the gender duty Regulatory Impact Assessment and for option 2b around 1.5 times these costs less 10% for adopting the new approach. But as the Regulatory Impact Assessment used 2003 National Earnings Survey data, we also allow for the general increase in public sector wage costs since then. This calculation is also based on revised assumptions about the costs associated with complying with the duties.

<sup>33</sup> This assumes the costs under option 3 would be around 2.5 times the costs estimated for the gender duty before allowing for earnings inflation concerning the data used in the gender duty Regulatory Impact Assessment. But as the Regulatory Impact Assessment used 2003 National Earnings Survey data, we also allow for the general increase in public sector wage costs since then. This calculation is also based on revised assumptions about the costs associated with complying with the duties.

of the ongoing costs under options 2a, 2b and 3 will be made in a subsequent Regulatory Impact Assessment. But a preliminary estimate taking into account economies of scale suggests total ongoing public sector costs of £27.9m to £40.8m per year under option 2a, £25.1m to £36.7m per year under option 2b and £41.9m to £61.1m per year under option 3<sup>34</sup>.

## Costs to Business

- 4.132 Under the current public sector duties, equality requirements on private contractors carrying out a service on behalf of a public authority can be included in the contract conditions where these obligations relate to the performance of the contract and are proportionate and value for money. For example, an obligation on a public authority running a prison to monitor the ethnicity of the prisoner population will need to be passed on to the contractor as a contract condition, if the running of that prison is contracted out<sup>35</sup>. In such cases, the public body can ask the contractor for additional supporting evidence of good practice, and they would ensure that their requirements in terms of evidence were proportionate to the scale of the contract and its relevance to equality, and to the size and experience of the contractor<sup>36</sup>.
- 4.133 The Government has considered, but is not recommending, specific legislative changes related to procurement as part of the public-sector duty to promote equality of opportunity. Instead, the Government proposes to encourage the development of guidance, best practice networks and other measures.
- 4.134 The Federation of Small Businesses survey 'Lifting the barriers to growth 2006' identifies 24% of its members as serving a local authority. Applying that percentage to the number of small employers (1.147m) and adding this to the number of medium and larger firms (37,000) produces a figure of around 300,000 public sector contractors.
- 4.135 As to the estimated costs of our proposals, some will be specific to the contract i.e. in procuring a catering contract the public authority may wish to specify the need to use halal meat and to prepare vegetarian food separately. Other costs will be associated with more generic criteria which public authorities may seek to apply i.e. some public authorities already ask companies whether they comply with

<sup>34</sup> We have estimated the one-off costs for local authorities of option 2b will be between £3.2m and £7.1m and under option 3 between £5.3m and £ 11.8m. Estimated ongoing costs to local authorities under option 2b are between £1.9m and £7.5m and under option 3 between £3.2m and £12.4m.

<sup>35</sup> Office of Government Commerce guidance, "Social issues in purchasing", February 2006.

<sup>36</sup> Public sector duty to promote gender equality: Regulatory Impact Assessment, November 2006, DTI.

discrimination law by asking a yes/no question, in some cases it is possible that public authorities may require evidence of how contractors are complying with discrimination law.

- 4.136 For those firms among the 300,000 public sector contractors which are requested to or anticipate that they should provide supporting material to back up a claim that they comply with discrimination law, we estimate the costs to be from £100-£225 per firm, depending on the extent to which staff training, policy discussion and new information management are required. However, we do not have data on how many existing contractors already have such policies and systems in place or on how many authorities currently require equalities information from suppliers, which makes it problematic to estimate the true administrative burdens. If a significant number of authorities chose to require, for example, workforce data, this could result in a total administrative burden of around £36m, assuming small and medium-sized firms do not have workforce recording systems in place. If most public bodies adopted a light touch, e.g. asking a yes/no question, the additional costs would be minimal. If most authorities chose to request copies of equality policies, then (assuming a quarter of business currently lacked them, and that to draw them up, agree and disseminate them would take suppliers around six hours), the administrative burden to businesses would be just over £11m.
- 4.137 In practice, authorities may adopt a variety of these approaches, but small businesses which plan to sell to public bodies would generally need to prepare for all these approaches unless they know which bodies they intend to sell to and their approach.

## Summary of Costs and Benefits

<b>Table 9: Costs and benefits of an integrated public sector duty*</b>									
<b>Option 1: do nothing – Continuing costs of having to monitor and report separately on each of the three existing duties (para 4.125 to 4.137)</b>									
<b>Option 2a: integrated duty covering race, disability and gender – current approach</b>									
	<b>COSTS £m</b>					<b>BENEFITS £m</b>			
	One-off		Recurring			One-off		Recurring	
	Low Est	High Est	Low Est	High Est		Low Est	High Est	Low Est	High Est
<b>Public Sector</b>									
Set up costs for some authorities (para 4.129)	29.3	57.3			No longer three separate duties (para 4.120)			46.1	61
Ongoing running costs of delivery teams (para 4.131)			27.9	40.8					
Administrative costs to public sector contractors (para 4.136)	0	36							
<b>TOTALS</b>									
<b>TOTAL COSTS</b>	<b>29.3</b>	<b>93.3</b>	<b>27.9</b>	<b>40.8</b>	<b>TOTAL BENEFITS</b>			<b>46.1</b>	<b>61</b>

<b>Table 9: Costs and benefits of an integrated public sector duty* (continued)</b>									
<b>Option 2b: integrated duty covering race, disability and gender – new approach</b>									
<b>Public Sector</b>									
Set up costs for some authorities (para 4.129)	26.5	51.5			No longer three separate duties (para 4.120)			46.1	61
Ongoing running costs of delivery teams (para 4.131)			25.1	36.7					
Administrative costs to public sector contractors (para 4.136)	0	36							
<b>TOTALS</b>									
<b>TOTAL COSTS</b>	<b>26.5</b>	<b>87.5</b>	<b>25.1</b>	<b>36.7</b>	<b>TOTAL BENEFITS</b>			<b>46.1</b>	<b>61</b>
<b>Option 3: integrated duty covering all equality strands – new approach</b>									
<b>Public Sector</b>									
Set up costs for some authorities (para 4.129)	44.1	86.9			No longer three separate duties (para 4.120)			46.1	61
Ongoing running costs of delivery teams (para 4.131)			41.9	61.1					
Administrative costs to public sector contractors (para 4.136)	0	36							
<b>TOTALS</b>									
<b>TOTAL COSTS</b>	<b>44.1</b>	<b>121.9</b>	<b>41.9</b>	<b>61.1</b>	<b>TOTAL BENEFITS</b>			<b>46.1</b>	<b>61</b>

\* This table only includes quantifiable costs and benefits. It does not take account of non-quantifiable costs and benefits indicated in paragraphs 4.122 to 4.137.

## Measure (g): improving the handling of discrimination cases in the county and sheriff courts

4.138 This part of the Regulatory Impact Assessment considers options for improving the handling of discrimination cases in the county and sheriff courts. The overall objective of these proposals is to reduce the burdens and stress of dealing with claims and to create a more efficient and effective process.

4.139 The vast majority of discrimination claims currently concern employment. There are very few claims of discrimination in the provision of goods, facilities and services. We estimate that there are 50-100 cases each year at present<sup>37</sup>.

### Options

4.140 The options for consideration are as follows:

- **Option 1 (recommended):** discrimination cases concerning the provision of goods, facilities and services, etc would remain in the courts but be heard in designated courts by selected judges who have received appropriate training. We are also considering whether it would be beneficial for judges to be accompanied by assessors (as currently happens in race discrimination cases).
- **Option 2:** do nothing.

### Benefits

4.141 **Option 1.** This option would lead to more consistent judgements and greater legal certainty. It would also be relatively straightforward to implement and could also increase the efficiency of hearings, potentially reducing the amount of time actually spent in court.

### *To the courts*

4.142 According to HMCS (Her Majesty's Courts Service), in 2005/06 the average day spent in the county court cost approximately £1,011.<sup>38</sup> The average time spent hearing a case in the county court in 2004 was 5 hours, 25 minutes.<sup>39</sup> If we take this to equate to roughly one full

<sup>37</sup> See Annex B for more detailed estimates of the number of cases brought in the county and sheriff courts.

<sup>38</sup> Total judicial costs for 2005/06 divided by total sitting days in court. Including administration costs, per day court costs are estimated at £2,844.

<sup>39</sup> Judicial Statistics 2004, Table 4.15. Average length of hearing in 'other' case of which discrimination claims are a part.

day in court, each hourly reduction of the hearing of a discrimination case in a county court will save £187. To illustrate potential aggregate savings, a reduction of just one hour in each discrimination case could lead to savings in the region of £40,000-£94,000.<sup>40</sup>

### *To businesses and claimants*

- 4.143 If cases are heard more efficiently, this will reduce the time spent on the case and money paid for advice and representation. There are only limited data on the cost of court cases to business and claimants, particularly discrimination cases. However, SETA (Survey of Employment Tribunals Applications) 2003 provides data on the administrative cost of tribunal cases (including money spent on advice and representation and staff time) to both employees and their employers.<sup>41</sup> The estimated total cost to an employer (including advice costs and time) in a discrimination case was £4,746. If the costs of a case at county court were roughly the same as that for an employment tribunal case, a 10% reduction in costs would save businesses around £475 per case, or £101,000-£237,000 per annum.<sup>42</sup>
- 4.144 Claimants pursuing discrimination cases at tribunals incurred approximately £1,171 in financial costs.<sup>43</sup> If we assume that claimants in court cases incur broadly similar costs and that there were a 10% reduction for claimants as a result of these proposals, they would save £117 per case, or £25,000-£59,000 per annum.
- 4.145 **Option 2.** The time spent in court and the costs incurred by those involved would not change. Inaction would prevent the benefits identified for Option 1 from accruing.

<sup>40</sup> Based on an estimated 212-500 goods, facilities, services (court) cases per annum, see Annex B, Table 17.

<sup>41</sup> Findings from the Survey of Employment Tribunals Applications (SETA) 2003  
<http://www.dti.gov.uk/files/file11455.pdf?pubpdfload=04%2F1071>

<sup>42</sup> Based on case estimates in Annex B, Table 17.

<sup>43</sup> DTI estimates based on SETA 2003.

## Costs

### *To the courts*

- 4.146 **Option 1.** If assessors were required to sit with judges in discrimination cases there would be additional costs. The fee paid to assessors currently used in race discrimination cases is £250 per day approx, plus some reimbursement for travel expenses. Cases in the courts last on average 5 hours and 25 minutes, which equates to one day. We estimate that between 212 and 500 goods, facilities and services, etc cases will be brought before the courts across all discrimination strands (see Annex B, Table 17). Requiring the use of two assessors in all discrimination cases heard in the courts would therefore incur costs of between £116,600 and £275,000 per annum.<sup>44</sup> There may also be some minimal additional administrative costs arising from the need for court staff to make arrangements for assessors to attend all discrimination cases. These are considered too small to be quantifiable.
- 4.147 Option 1 would also involve costs of providing additional training for a small number of judges. Figures provided by the Judicial Studies Board indicate that initial Year 1 training costs would be £32,440 falling to £10,680 in subsequent years.
- 4.148 **Option 2.** The time spent in court and the costs incurred by those involved would not change. However, inaction would prevent the benefits identified for Option 1 from accruing.

<sup>44</sup> Estimated figures for payment of fees and travel expenses for two assessors for one day.

<b>Table 10: Costs and benefits of options for improving the handling of discrimination cases in the county and sheriff courts*</b>									
<b>Option 1 (recommended): county and sheriff court cases heard by judges with additional training in discrimination law accompanied by law assessors</b>									
	<b>COSTS £m</b>					<b>BENEFITS £m</b>			
	One-off		Recurring			One-off		Recurring	
	Low Est	High Est	Low Est	High Est		Low Est	High Est	Low Est	High Est
<b>Public Sector</b>									
Additional training for judges (para 4.147)	0.032	0.032	0.011	0.011	More efficient disposal of cases (para 4.142)			0.040	0.094
Paying assessors (para 4.146)			0.117	0.275					
<b>Private Sector</b>									
					More efficient disposal of cases (para 4.143)			0.101	0.237
<b>Individuals</b>									
					More efficient disposal of cases (para 4.144)			0.025	0.059
<b>TOTALS</b>									
<b>TOTAL COSTS</b>	<b>0.032</b>	<b>0.032</b>	<b>0.128</b>	<b>0.286</b>	<b>TOTAL BENEFITS</b>			<b>0.166</b>	<b>0.390</b>
<b>Option 2: do nothing – No significant quantifiable costs and benefits (para 4.138 and 4.148)</b>									

\* This table only includes quantifiable costs and benefits. It does not take account of non-quantifiable costs and benefits indicated in paragraphs 4.138 to 4.148.

## Objective (iii): modernising the law where appropriate

### Measure (h): whether to provide protection from discrimination on grounds of age in the supply of goods, facilities, services and premises and the exercise of public functions

4.149 The consultation document seeks views on whether there is a case for prohibiting age discrimination in the provision of goods and services. No decision will be taken until after the full public consultation has been completed. Therefore, none of the three options outlined below is recommended at this stage.

**Option 1:** do nothing

**Option 2:** extend protection against age discrimination in the supply of goods, facilities, services, premises and the exercise of public functions, by means of a general prohibition on age discrimination against adults (those aged 18 and over), unless the discrimination could be objectively justified or fell within specific named exceptions or positive action provisions (i.e. provisions that allow special or favourable treatment on grounds of age). This would mean that, for example, children below the age of 18 would be excluded; and that public sector transport concessions for people over State pension age would be unaffected. In insurance, differentiation on age grounds would be permitted, provided it was reasonable by reference to actuarial data or other objective evidence.

**Option 3:** use non-legislative measures to tackle discrimination, such as the National Service Framework for Older People, voluntary agreements in the insurance industry or Codes of Practice. There would continue to be no basis for a legal challenge to age discrimination perceived as unfair and arbitrary. For example, someone who believed their access to healthcare was being hindered by ageist assumptions about their ability to benefit from treatment would have no formal recourse under discrimination legislation. However, individuals would be able to complain to the relevant Ombudsman. The Commission for Equality and Human Rights will also play an important role in helping to eliminate ageist behaviour.

### Benefits: extending protection against age discrimination

4.150 **Option 1:** no additional benefits

4.151 **Option 2:** adults would have access to a wider range of goods, facilities, services and premises without any unfair or harmful age restrictions, resulting in increased competition in the marketplace and a small increase in efficiency.

## ***Motor and travel insurance***

- 4.152 This option would extend protection against age discrimination in insurance by requiring that insurers may only discriminate on the basis of age in assessing risk where this is reasonable with reference to actuarial or other objective data.
- 4.153 It would not require all insurers to offer all their products to customers of all ages. It is recognised that offering accurately priced insurance premiums requires the collection of substantial information about potential customers. This may vary by different age groups and where it does, collection of new data represents a cost of production. There are therefore returns from specialisation and the proposals are not intended to interfere with the efficient operation of the market.
- 4.154 Insurers price according to risk. This means that they judge the probability of a claim being made and the cost of that claim when working out premium rates. Older and younger people tend to be charged more for motor insurance than middle-aged people. In other areas such as home contents insurance, older people tend to be charged lower than average premiums.
- 4.155 The insurance market is generally considered to be competitive and there is evidence to show that people as a whole make more frequent and larger insurance claims as they age. Research by Ipsos MORI<sup>45</sup>, on behalf of the Association of British Insurers, estimates that travel insurance customers aged over 65 are 3 times more likely to claim than those aged 35, and customers aged over 85 are 8 times more likely to claim. Additionally, travel insurance claims made by the over 65s – driven by medical costs that increase with age – are three and a half times more expensive than for the under 50s.
- 4.156 However, older people's organisations have voiced concerns that the premiums charged to older customers do not fairly reflect the underlying risk, particularly in respect of travel and motor insurance, employers' liability insurance and private medical and personal accident insurance.
- 4.157 The most common complaint is that premiums increase suddenly at certain age thresholds, such as 65. This may be because some insurers use relatively wide age bands when calculating premiums, so that for example a 65 year old is placed in the same risk pool as a 74 year old. Legislation could lead insurers to use narrower age bands. Policy holders at the lower end of existing age bands are likely to benefit, but

<sup>45</sup> Older Travellers: A study of the link between age, health risk and travel insurance – research conducted for the Association of British Insurers by Ipsos Mori, September 2006.

conversely customers at the higher end are likely to experience higher premiums.

- 4.158 If some insurance companies are currently charging older customers higher premiums than can be reasonably justified according to actuarial and other objective evidence, new legislation should encourage premiums to fall. The extent to which the average premium falls will depend on a) how widespread unfair discrimination is across companies, and b) by what margin they are overcharging their customers. Overall, given that the insurance market is generally considered to be competitive, we assume that the average fall in premiums following any legislation would not be large, at most 1%.
- 4.159 According to figures provided by the Association of British Insurers and the ONS (Office for National Statistics) Expenditure and Food Survey 2004-05, total household spending on insurance in the UK is £19.1bn. This includes £10.7bn on motor insurance and £260m on travel insurance. Assuming that discrimination in the provision of motor and travel insurance principally affects the over 65s, this means that 16% of the population could potentially benefit from a prohibition on arbitrary and unfair age discrimination in insurance.<sup>46</sup> However, households with over 65s appear to spend less on insurance than the average household, so the share of the market affected will be somewhat less than 16%.<sup>47</sup> For the sake of these estimates we assume that over 65s make up 5-15% of the travel and motor insurance market, worth approximately £0.55bn – £1.65bn in total. A 0%–1% fall in premiums would therefore represent savings of up to £16.5m to older consumers.
- 4.160 Any fall in travel and motor insurance premiums would benefit older people by helping them to maintain their independence and mobility for longer. Employers may benefit from a reduced risk of significant increases in group insurance costs resulting from employing older workers.

### ***Credit facilities***

- 4.161 The store credit card sector had 11.4 million active accounts at the end of 2005, with outstanding balances of around £2.3 billion.<sup>48</sup> Prohibiting age discrimination could result in an increase in the number of accounts

<sup>46</sup> ONS data on population distribution, <http://www.statistics.gov.uk/cci/nugget.asp?id=949>

<sup>47</sup> According to ONS Family Spending Report (2004-2005 EFS), table A13, the average household spends £15.10 on insurance each week, but those with a household reference person (HRP) aged 65-74 spend £11, and those with HRP aged 75+ just £8. However, this differential is partly explained by the fact that older people tend on average to live in smaller households than younger people.

<sup>48</sup> Competition Commission, "Store Cards Market Investigation", p3.

and the credit provided. Given the limited evidence of discrimination, we assume a 0.5-1% increase in activity, i.e. 55,000 – 115,000 new accounts and £12million – £23 million store credit available to older customers.

### *Health care*

- 4.162 Legislation would send out strong signals that ageism is unacceptable and thereby help change cultural attitudes to ageing which are hampering Government efforts to improve health care for older people<sup>49</sup>. Improved access to healthcare, wider choice, reduced likelihood of relegation to the bottom of waiting lists and better treatment all contribute to important intangible factors such as self-esteem and dignity amongst older people. While these are difficult to quantify, they are nevertheless an important aspect of economic and social equality and poverty reduction. As a consequence, such improvements will have a positive impact on the economy through increased wellbeing and social welfare.
- 4.163 **Option 3.** Targeted measures such as voluntary agreements with the insurance industry, the National Service Framework for Older People, and potentially a public duty covering age (see measure (f)) would go some way to tackling discrimination, thereby delivering some of the benefits identified under option 2, without placing undue regulatory burdens on service providers, which could result from legislation that could be relatively complex and could result in unintended consequences.

### **Costs: extending protection against age discrimination**

- 4.164 **Option 1** results in no additional costs. In **Option 2** nearly all public, private and voluntary sector organisations would need to examine how they provide goods, facilities, services and premises and how they exercise public functions, to ensure that they comply with the law. Guidance would be prepared by the Commission for Equality and Human Rights.
- 4.165 The activities that would be covered by an objective justification defence (thus enabling a service provider to justify age discrimination on the merits of the case) and those that would be exempted altogether from the ban on age discrimination would be determined following further consultation. However, the greatest costs would be incurred in areas where there is currently age differentiation of a kind that would need to be amended following legislation.

<sup>49</sup> [http://www.healthcarecommission.org.uk/\\_db/\\_documents/Living\\_well\\_in\\_later\\_life\\_full\\_report.pdf](http://www.healthcarecommission.org.uk/_db/_documents/Living_well_in_later_life_full_report.pdf)

### ***Private sector: insurance and financial services***

- 4.166 In the private sector, the areas likely to be affected most significantly would be the insurance and financial services sectors. However, insofar as it is already standard practice to use actuarial data to underpin assessments based on age, the impact should be relatively small. Insurers will need to familiarise themselves with any new legislation and consider the impact on their business practices – costs for this are detailed in Table 3. Any resulting fall in premiums for customers of a particular age is likely to be recouped by adjusting premiums across the board and would not therefore represent an overall cost to insurance companies.
- 4.167 Under the Irish Equal Status Act 2000, which makes similar provision in respect of insurance as is proposed under Option 2, only a tiny number of age discrimination cases have been brought against insurers, suggesting that the number of cases likely to be brought against UK insurers would also be minimal.

### ***Health and social care***

- 4.168 In the public sector, the greatest change would probably be in health and social care. The costs of assessing eligibility for health and social care would increase if practitioners were required to carry out fuller individual assessments of need rather than relying on age as a proxy for ability to benefit from intervention. However, the National Service Framework for Older People has made a major contribution to developing good practice along these lines and the use of explicit age criteria in health and social care is already relatively rare – in many areas the major cause of concern is ageist attitudes which can lead to older people being treated with a lack of dignity and respect rather than the explicit use of age-based criteria.<sup>50</sup> The Government's White Paper *Our health, our care, our say* also made a clear commitment to developing good practice in this area.<sup>51</sup> As such it is anticipated that additional costs arising from any legislation would be quite low and/or absorbed within existing programmes in the majority of areas.
- 4.169 However, we have considered whether removing age discriminatory policies and practices may have more significant cost implications in two key areas – mental health services and social care.

<sup>50</sup> *Living well in later life – A review of progress against the National Service Framework for Older People*, Commission for Social Care Inspection, Audit Commission and Healthcare Commission, March 2006.

<sup>51</sup> *Our health, our care, our say: making it happen*, Department of Health, October 2006.

- 4.170 Within mental health services, age-based access criteria are still widely applied with many adult services split between older adults and working adults using fairly strict age-based criteria, usually around the age of 65. The Department of Health's *Everybody's Business: integrating mental health services for older adults* has already indicated that this practice must change so that services are accessed on the basis of need, with older people's specialist mental health services available to younger adults on the basis of need (for example, access to dementia services for younger adults) and general adult services available to older adults on the basis of need (for example, assertive outreach services for older people with psychotic illness).
- 4.171 The Department of Health considers that the changes that would be required by any legislation are in line with those already set out in *Everybody's Business*. It is anticipated that administrative changes will be required in some areas but that there will not necessarily be a change in the cost of services overall, as services will be better matched to need.
- 4.172 In respect of social care, there are no age discriminatory requirements set out in legislation or Government policy. Department of Health guidance requires that social care assessments and any subsequent provision of services are based on need. Services are expected to promote independence and choice as well as safety. The Department of Health makes clear that all staff should treat older people with respect and dignity.
- 4.173 However, there is anecdotal evidence that discrimination against older people does occur in practice. And according to a report by the Social Policy on Ageing Information Network in 2005, although older people comprise 62% of social services' clients, they only account for 47% of the budget<sup>52</sup>. The final report of the Equalities Review notes that the share of spending on social care for people aged 65 is falling at a time when this age group is growing faster than ever before.<sup>53</sup>
- 4.174 Local authorities pay lower rates for older people's residential care than for other groups. Statistics published by the Department of Health show that in 2004-5 local authorities paid an average of £405 per person per week for older people's residential and nursing care, whilst for younger adults the amount ranged from £487 to £820.<sup>54</sup> Some of this differential is accounted for by the more complex needs of some younger adults

<sup>52</sup> *What Price Care in Old Age?* Social Policy on Ageing Information Network, July 2005, available at [http://www.cpa.or.uk/cpa/policies\\_on\\_ageing.html](http://www.cpa.or.uk/cpa/policies_on_ageing.html)

<sup>53</sup> *Fairness and Freedom* – The Final Report of the Equalities Review, February 2007.

<sup>54</sup> NHS Health and Social Care Information Centre, *Social Care Statistics*, 2006.

with learning or physical disabilities. However, some of the differential may stem from ageist assumptions about the needs of older people, for example to take part in regular social or other activities.

- 4.175 Even with some redistribution of resources within the social care system, legislation may lead to increased costs for local authorities and it is recognised that these could be significant, though the extent is currently unclear. Detailed costings are being undertaken by the Department of Health and will be provided in the final Regulatory Impact Assessment, should a decision be taken to legislate in this area.
- 4.176 In order to tackle the ageist attitudes which continue to impact negatively on a range of services provided to older people<sup>55</sup>, it may also be necessary to review and amend training provided to staff, to ensure they understand what the law means for them and what steps they should take to ensure they do not act, inadvertently or otherwise, in a discriminatory manner. It is anticipated that this would be built into existing training programmes and would not therefore represent additional costs.
- 4.177 **Option 3.** Costs of voluntary measures within the insurance industry, for example, would depend on the precise measures being considered. This has not yet been determined and has therefore not been quantified. Other measures such as the National Service Framework are already in place and therefore do not represent additional costs, although any new non-legislative measures may give rise to additional costs. Codes of Practice or guidance could be issued by the Commission for Equality and Human Rights as part of its broader remit to promote understanding of the importance of equality and diversity.

## Recommendation

- 4.178 A decision on whether to legislate will be taken following the consultation period.

<sup>55</sup> *Living well in later life – A review of progress against the National Service Framework for Older People*, Commission for Social Care Inspection, Audit Commission and Healthcare Commission, March 2006.

<b>Table 11: Costs and benefits of providing protection against age discrimination in supply of goods, facilities and services, etc*</b>									
<b>Option 1: do nothing – No significant quantifiable costs and benefits (para 4.164 and 4.150)</b>									
<b>Option 2: general extension of protection against age discrimination</b>									
	<b>COSTS £m</b>					<b>BENEFITS £m</b>			
	One-off		Recurring			One-off		Recurring	
	Low Est	High Est	Low Est	High Est		Low Est	High Est	Low Est	High Est
<b>Public Sector</b>									
Familiarisation costs (table 3)	1.61	1.61							
Costs to health/social care providers	Minimal additional costs in most areas, where commitments to eliminate discriminatory policies and practices are already in place (eg mental health services) but potentially significant costs in respect of social care which have not yet been quantified.								
<b>Private Sector</b>									
Familiarisation costs (table 3)	8.36	8.36							
<b>Individuals</b>									
					Insurance savings for some older consumers (para 4.159)			0	16.5
					Additional credit available (para 4.161)			12	23
<b>TOTALS</b>									
<b>TOTAL COSTS</b>	<b>9.97</b>	<b>9.97</b>			<b>TOTAL BENEFITS</b>			<b>12</b>	<b>39.5</b>
<b>Option 3: explore non-legislative targeted measures to tackle discrimination such as voluntary agreements or Codes of Practice – No significant quantifiable costs and benefits (para 4.163 and 4.177)</b>									

\* This table only includes quantifiable costs and benefits. It does not take account of non-quantifiable costs and benefits indicated in paragraphs 4.149 to 4.178.

## Measure (i): providing protection from discrimination on grounds of gender reassignment in the exercise of public functions; and applying the concept of indirect discrimination to gender reassignment

- 4.179 The UK is implementing EU Directive 2004/113/EC (the Gender Directive) which among other things provides protection from discrimination on grounds of gender reassignment in the access to and supply of goods, services and premises, including the provision of services by public authorities. The Directive must be implemented by December 2007 and the Government intends to do this through regulations. The impact of those regulations is set out in a separate Regulatory Impact Assessment (see Annex C).
- 4.180 The scope of the Directive is narrower than existing domestic legislation, so inconsistencies of approach, though minimised, would remain. The analysis here relates only to measures that would go beyond the Gender Directive.

### Options

4.181 The options for consideration are:

- **Option 1:** do no more than is required by the Gender Directive
- **Option 2 (recommended):** go beyond the Directive to reflect the protection provided for other equality strands, by:
  - applying the concept of indirect discrimination to gender reassignment;
  - preventing discrimination on grounds of gender reassignment in the exercise of public functions.

### Benefits

- 4.182 **Option 1:** no benefits beyond what must be done under the Gender Directive (see Annex C).
- 4.183 **Option 2:** Consistency with protections already available in other strands of GB law would provide a simpler and more coherent picture of the responsibilities that organisations undertaking functions of a public nature would have under the law.

## Costs

- 4.184 **Option 1:** Minimal costs but there would be a lack of clarity in the law for organisations with public functions. Indeed, if we were to allow differences to continue between the protection provided to transsexual people and that provided to other equality strands, public sector service providers would have to familiarise themselves with the law specifically as it relates to gender reassignment. This would be more costly and time-consuming.
- 4.185 **Option 2.** Extending protection to cover indirect discrimination and the exercise of public functions would have little, if any, impact on business costs. There are no more than 5,000 transsexual people, under the existing definition of gender reassignment. There may be very minor costs of modifying existing equality training to ensure that staff are aware of circumstances where indirect discrimination may occur; and of factoring the consideration of gender reassignment issues into relevant policy-making of public bodies. Likewise, it is assumed that any increase in court or tribunal costs as a result of claims on grounds of indirect discrimination or the exercise of public functions will be minimal. These costs are reflected in Annex C.

## Measure (j): Extending protection for women in pregnancy or maternity beyond the scope of the Gender Directive to include the exercise of public functions

- 4.186 The Gender Directive requires the UK to provide protection from discrimination because of pregnancy or maternity, in the supply of and access to goods, services and premises.
- 4.187 The Sex Discrimination Act 1975 (SDA) provides explicitly that discrimination *in employment and vocational training* on grounds of pregnancy and maternity is unlawful sex discrimination, but there is no equivalent provision in respect of *goods, facilities and services*.
- 4.188 The Government intends to introduce an explicit provision to this effect, in order to increase clarity for service providers about their obligations under the law, provide consistency with the existing employment and vocational training provisions, and ensure that UK law complies fully with the Gender Directive. (See Annex C)
- 4.189 The Gender Directive does not extend to the exercise of public functions – that is to say, policy- and decision-making by public bodies (but not the supply of public services). This is what the Government is proposing.

## Options

**Option 1:** do no more than is required under the Gender Directive (see Annex C)

**Option 2 (recommended):** extend protection from discrimination on grounds of pregnancy and maternity to the exercise of public functions.

## Benefits

4.190 **Option 1:** None identified beyond those set out in Annex C.

4.191 **Option 2:** This would make the obligations of public authorities in relation to pregnant women and new mothers consistent with their obligations towards other groups, thereby eliminating potentially confusing inconsistencies in the law and making it easier for authorities to provide guidance and training for staff.

## Costs

4.192 **Option 1:** No costs beyond those identified in Annex C.

4.193 **Option 2:** There may be very minor familiarisation costs and a negligible increase in cases. These are reflected in Annex C.

## Measure (k): extending statutory protection against harassment outside the workplace

4.194 Currently, it is unlawful to harass people *in employment or vocational training* on grounds of race, sex, disability, religion or belief, age and sexual orientation.

4.195 By contrast, there are gaps in statutory protection from harassment *outside the workplace*, i.e. in the provision of goods, facilities, services, education in schools, disposal or management of premises and the exercise of public functions. There is statutory protection in these areas in respect of race and there will be in respect of sex (to comply with the Gender Directive) in provision of goods, facilities and services and premises. But statutory protection against harassment outside the workplace does not currently apply in respect of religion or belief, sexual orientation, age or disability.

4.196 The consultation document does not put forward definitive proposals on harassment in these areas but simply asks for views on three options:

- full or partial extension of statutory protection in all strands and in all areas outside the workplace

- differential treatment of harassment on grounds of religion or belief
- differential treatment according to whether harassment occurs in an open or closed environment.

## Costs

4.197 Whichever approach is adopted (full or partial or differentiated extension of statutory protection), the proposal will lead to an increased number of cases, but this is unlikely to be significant. The estimates below are based on a cost scenario assuming *full* extension of statutory protection.

4.198 We must in any event extend protection against harassment on grounds of sex in the provision of goods, facilities and services and disposal or management of premises, to comply with EU law. Assuming 2-5% of the 175 calls to the EOC in 2004 and 2005 regarding discrimination ended in cases before the county court, we estimate this represents 4-9 gender discrimination cases/year in the county court. However, no separate figures are recorded for *harassment* (which is treated for the purpose of record-keeping as a type of discrimination case) – it is unlikely to be more than 2-3 cases/year, at present. So any increase in cases as a result of the extension on grounds of sex is likely to be minimal.

4.199 To date, although harassment on grounds of race is prohibited outside the workplace, no cases have been reported since its introduction in 2003. Likewise, there have been no cases involving harassment in higher or further education institutions (prohibited in respect of all equality strands).

4.200 So there is little evidence as yet on which to estimate any increase in county court cases as a result of extending the prohibition of harassment outside the workplace to cover sexual orientation, religion or belief, age and disability. For indicative purposes and based on a 2%–5% increase in claims, one might assume impact figures of a similar nature to those assumed in paras 4.39 and 4.40 above, as follows:

- court costs: £4,044-£6,066
- costs to service providers: £292,000-£731,000
- costs to taxpayers: £56,000-£140,000
- costs to claimants: £72,000-£180,000
- compensation costs to employers/benefits to claimants: £196,000

Total costs (excluding compensation costs which are matched by benefits):  
£424,044 – £1,057,066 (excluding familiarisation costs see Table 3).

## Measure (I): Making adjustments to common parts of let residential premises

### Options

4.201 Three options are considered:

**Option 1:** no change

**Option 2 (recommended):** legislative changes requiring landlords to make adjustments to common parts where reasonable

**Option 3:** improved funding, guidance and conciliation for adjustments to common parts, no legislative changes

### Numbers affected

4.202 The Survey of English Housing identifies 270,000 households with disabled people who consider their accommodation to be unsuitable; this figure has been adjusted to get a figure for England and Wales of 285,000. It is assumed that there are some common parts in the case of all flats and maisonettes – 18% of households live in a flat or maisonette. For a small proportion of other households there will also be some common parts (e.g. shared driveways and parking areas) – it is not possible to quantify how many. It has been assumed that 20% of households have common parts. It is therefore estimated that 57,000 disabled people (20% of 285,000) are facing difficulties because of inaccessible common parts.

4.203 The actual number of disabled people affected by the proposed change will, however, be much greater. This is because disabled people who have difficulties with access are currently restricted in their choice of housing, so this proposal will increase their ability to purchase property and move home, for more suitable accommodation or to be near work.

(Note – figures provided in the costings below may not sum due to rounding. Costs have been rounded to the nearest £ million and the number of adjustments to the nearest 1,000.)

## **Option 1: do nothing**

4.204 No additional costs.

## **Option 2: legislative changes requiring landlords to make adjustments to common parts where reasonable (charges for adjustments will fall to the tenant or lessee making the request)**

### **Benefits to disabled people**

- 4.205 We estimate that half the 57,000 disabled people facing difficulties because of inaccessible common parts (29,000 people) will make adjustments in the first year following the legislative change. This assumption is based on 50% awareness of disability legislation among disabled people.
- 4.206 More disabled people will be able to move home more easily. Fewer disabled people will be 'prisoners in their own homes'. Fewer will have accidents due to inaccessible common parts. Disabled people generally will enjoy greater ability to participate in society, work and live independently.

### **Costs to Government**

- 4.207 There are a number of funds available for disability-related adjustments. The main source of funding is the Disabled Facilities Grant, depending on the cost of the adjustment and the tenure of the property.
- 4.208 Detailed calculations which break down the costs by funding stream are at Annex D. It is assumed that half of those requesting adjustments to common parts will apply for government funding. Local Government Association data show that 40% of applications do not proceed. It is therefore assumed that up to 8,000 grants may be paid in the first year, with a potential value of £27m.
- 4.209 Central government grants for funding disability-related adjustments are distributed according to priority rules and budgetary constraints. The Government has increased the funding for Disabled Facilities Grants to £121m in 2006/07. Such grants are already available for making adjustments to common parts, although evidence suggests that currently few are paid for this purpose. Removing the legal barriers (i.e. the need to get consent of a landlord) will make it easier for disabled people to make such adjustments and hence result in grants being made up to £27m, as indicated above. This may result in other lower-priority applications being refused or deferred.

*Estimated cost to Government of funding adjustments: up to £27m*

### ***Supporting People***

4.210 Enabling some people to go outside, possibly for the first time in years, may result in a short term need for support with things like shopping. The Communities and Local Government Supporting People scheme provides such support. However, this option should have only a negligible effect on the Supporting People Scheme.

### ***Housing Benefit***

4.211 The costs to the person making the adjustment will not be paid through their rent or service charges and therefore will not be eligible for Housing Benefit. The intention is that the costs will be payable by the person requesting the adjustment and so will remain separate from rent or service charges and therefore not be eligible for Housing Benefit.

### **Benefits to Government**

4.212 Benefits to Government arise from a reduced need to provide home and residential care to disabled people who have problems accessing their home. There are possible savings to the National Health Service from fewer people going into hospital because of accidents and people being able to return home sooner.

### ***Home care savings***

4.213 It is estimated that 20% of the 29,000 disabled people making adjustments to the common parts of their property receive Council funded home care that they would be able to reduce by half with an adjustment to the common parts of their property<sup>56</sup>.

4.214 This produces an annual saving of £17m.

### ***Residential care***

4.215 Improving access to disabled people's homes may reduce the numbers needing to enter residential care. 15% of the 135,000 people entering residential care each year, i.e. 20,000 people, do so because their home is no longer suitable. If this was reduced by between just 1% and 5%, the annual savings would be between £7m and £36m.

<sup>56</sup> Based on research findings from the Audit Commission, Department of Health and Scottish Executive.

4.216 There is potentially an additional saving from people who have entered long term residential care subsequently being able to return home. It is assumed here that this effect will be negligible.

*Estimated savings from care provision: £24m to £53m*

### **Hospital admissions**

4.217 Some reduction in the number of people admitted to hospital each year would be expected from common parts adjustments. The NHS may also incur savings from being able to send people home earlier when their accommodation is more suitable.

### **Benefits to carers**

- There are estimated to be over 5.2m informal carers in the UK.
- Informal carers will be able to reduce the numbers of hours they spend caring. This will improve the quality of their lives allowing them more time for themselves and potentially to enter the labour market.
- For some, this may have the additional effect of allowing the disabled person to live at home rather than entering residential care – for a significant number (38%) of people entering residential care, stress on carers is one of the reasons stated for moving into a residential care home<sup>57</sup>.

### **Cost to other tenants or lessees**

4.218 There will be no monetary cost to other tenants or lessees, as the person requesting the adjustment will be responsible for paying for it.

### **Benefits to other tenants or lessees**

4.219 Other tenants or lessees may also benefit from the adjustments made. Research prepared for the Review Group on Common Parts<sup>58</sup> found that around half of households with common parts reported that adjustments to common parts had already been made. This group expressed a very high level of satisfaction with the adjustments, and no-one expressed dissatisfaction.

<sup>57</sup> Care home for older people – admission, needs and outcomes, PSSRU, 2001.

<sup>58</sup> Attitudes to making adjustments to the common parts of rented and leased residential premises can be found at <http://www.dwp.gov.uk/asd/asd5/rports2005-2006/rrep317.pdf>

## **Costs v Benefits**

4.220 The costs of funding common parts adjustments are estimated at up to £27m. The savings in formal care costs are estimated to be up to £53m. It is therefore concluded that the monetary benefits outweigh the costs – with possible savings to the Government of £27m in the first year.

4.221 There are also significant benefits to the quality of life of the disabled people affected and in many cases their carers. There are additional knock on benefits to their local communities, the economy and the housing market. This, combined with findings that other lessees are unlikely to oppose adjustments they do not have to contribute to financially, suggest that there is a net benefit to option 2.

## **Option 3: improved funding, guidance and conciliation for adjustments to common parts, no legislative changes – ‘improving the system’.**

### **Benefits to disabled people**

4.222 It is assumed that improved guidance and conciliation will make the process easier for disabled people but will have negligible effects on the numbers actually making adjustments, because of the lack of a clear right to make adjustments or duty for landlords to do so.

4.223 It is known from the Survey of English Housing that 27% of disabled people living in unsuitable accommodation have not made adjustments because they think it would cost too much. We have assumed that the same percentage of people with unsuitable common parts have not made adjustments due to the cost. This gives 15,000 people who may be influenced by the increased funding available. It is further assumed that for half of the 15,000, cost will be the only reason for not making adjustments (i.e. not also objections from neighbours), so 8,000 will be prompted to make adjustments and apply for funding. It is assumed that although the funding will be increased, the same eligibility criteria will apply and that 40% of grant applications will not proceed, as currently. It is estimated that up to 5,000 adjustments will be made. They will see the same benefits as outlined in option 2.

### **Costs to disabled people**

4.224 No extra costs – as all extra adjustments and maintenance will be funded. Additionally, it is assumed guidance and conciliation service will be provided free of charge.

## Benefits to Government

### *Home care savings*

4.225 With 5,000 extra people making adjustments that decrease their need for home care (again assuming 20% receive home care and they are able to halve the amount of care they need), government will save £3m in home care costs in the first year.

### *Residential care savings*

4.226 With only an extra 5,000 making adjustments, we have assumed this will not have a substantial affect on the annual inflow into care.

## Costs to Government

4.227 The cost of funding an extra 5,000 adjustments is estimated at an additional £14m in the first year.

### *Costs v Benefits*

4.228 The costs of funding common parts adjustments under this option are estimated to be around £14m in the first year. We estimate no significant savings in residential care and savings of £3m in home care costs.

4.229 The net cost to Government spending under this option is estimated at £12m.

## Conclusion

4.230 The analysis of costs and benefits leads us to conclude that the most cost effective option is option 2.

<b>Table 12: Costs and benefits of making adjustments to common parts of let residential premises*</b>									
<b>Option 1: do nothing – No significant quantifiable costs and benefits (para 4.204)</b>									
<b>Option 2: Legislative changes putting landlords under a duty to make reasonable adjustments to common parts where reasonable</b>									
	<b>COSTS £m</b>					<b>BENEFITS £m</b>			
	One-off		Recurring			One-off		Recurring	
	Low Est	High Est	Low Est	High Est		Low Est	High Est	Low Est	High Est
<b>Public Sector</b>									
Increase of 8000 grants to pay for adjustments to common parts (para 4.208)	0	27			Home care savings (para 4.214)	17	17		
					Residential care savings (para 4.215)	7	36		
<b>TOTALS</b>									
<b>TOTAL COSTS</b>	<b>0</b>	<b>27</b>			<b>TOTAL BENEFITS</b>	<b>24</b>	<b>53</b>		
<b>Option 3: improved funding, guidance and conciliation for adjustments to common parts, no legislative changes</b>									
Increase of 5000 grants to pay for adjustments to common parts (para 4.227)	14	14			Home care savings (para 4.225)	3	3		
<b>TOTALS</b>									
<b>TOTAL COSTS</b>	<b>14</b>	<b>14</b>			<b>TOTAL BENEFITS</b>	<b>3</b>	<b>3</b>		

\* This table only includes quantifiable costs and benefits. It does not take account of non-quantifiable costs and benefits indicated in paragraphs 4.204 – 4.227.

4.231 The costs shown here are first year costs. They will be the highest as the stock of people currently living with unsuitable common parts are expected to make the change in the first year. There will be others who do not become aware of the changes in the first year, but do so in later years and then make adjustments – this group can be expected to phase out after the first few years. There will be others who become impaired and then need to make common parts adjustments. In coming years, both the costs and benefits and therefore the net benefit will reduce and then level off. However, the benefits will always outweigh the costs by the same factor.

### **Impact of changes to the threshold for reasonable adjustments**

4.232 In the section on “measures to improve the Disability Discrimination Act” of this Regulatory Impact Assessment, it is recommended that there is a single threshold in the Act at which the duty to make reasonable adjustments is triggered – that is the ‘substantial disadvantage’ test. If this recommendation is adopted, the threshold for the duty on common parts will be lower than implicitly assumed here.

4.233 It is expected that the costs and savings under option 2 will remain unchanged should the threshold be lowered at which reasonable adjustments are triggered. There is likely however, to be some increase in the number of adjustments being made as more people subsequently qualify.

## 5. Small Firms Impact Test

- 5.1 The costs and benefits of each proposed measure for small businesses will vary. In general, the impact is unlikely to be substantial on any particular small business. This is because the existing method of enforcing discrimination law is essentially reactive, through claims brought by individuals before employment tribunals or the county courts. There are no proposals to change this basic approach.
- 5.2 Enforcement of discrimination law does not involve routine interventionist or invasive mechanisms. The Commission for Equality and Human Rights has power to conduct investigations, but this is intended for use on a strategic basis. Under discrimination law there are no inspectorates or agencies with powers to search and seize company documentation or to enter company premises; and there is no mandatory reporting requirement on companies covering, for example, the composition or pay of their workforce.
- 5.3 As a result, there are no mandatory administrative burdens on small business arising from form-filling or reporting. The Government is not proposing to change this existing light-touch approach.
- 5.4 On the costs side, there will be some administrative burdens on small firms as a result of the need to familiarise themselves with adjustments to the law, as reflected in new or amended guidance produced by the Commission for Equality and Human Rights and others. Estimated costs are shown in Table 3 above and amount to £189 per small business (£43.51m divided by 230,000 small firms).
- 5.5 On the benefits side, possibly the main benefits for small business will arise from simplification and standardisation of the law. It is not that small businesses (or even large businesses) regularly or ever look at the law itself – their main experience of the law is likely to be if a case is brought. However, small businesses during the course of the consultation on establishing the Commission for Equality and Human Rights made clear that they supported the Commission as a one-stop-shop for advice and guidance. Simplifying and standardising the law will enable the Commission and other individuals and bodies advising small firms to produce simpler and clearer guidance. The general benefits of simplification are indicated in para 4.26 above.
- 5.6 Small businesses, like large businesses, should also benefit from being able to draw on a more diverse pool of labour, thereby improving skill matching with vacancies; opening up more diverse customer markets; and from reduced likelihood and more efficient processing of tribunal and court cases.

## 6. Competition assessment

6.1 A detailed competition assessment is not necessary for any of the proposals put forward in this Regulatory Impact Assessment. The options presented apply across the board and across all sectors of the economy. They do not favour one sector of employment or business activity over another. The answer is “No” (or, in the case of question 8, “not applicable”) to all nine questions of the competition filter test:

<b>Table 13: Competition Filter Test</b>	
Question	Answer Yes/No
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	No
Q6: Would the regulation lead to higher set-up costs for new or potential firms that existing firms do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential firms that existing firms do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	N/A
Q9: Would the regulation restrict the ability of firms to choose the price, quality, range or location of their products?	No

6.2 Nonetheless, as highlighted in the general benefits section (para 4.1 – 4.9) the proposals may impact on labour market involvement of disadvantaged groups, improving skills match, filling vacancies, and therefore raising productivity. This can be expected to improve the international competitiveness of the UK more generally.

## 7. Enforcement, sanctions and monitoring

- 7.1 As indicated above, the primary means of enforcing the simplified law will remain with individuals bringing claims to the employment tribunals or the county courts. The Commission for Equality and Human Rights will be able to support some victims of discrimination, when the cases are of a strategic nature. In 2005/6, about 40,000 applications were registered with employment tribunals which included claims of discrimination; of these, the existing equality Commissions supported 250. The Commission for Equality and Human Rights will also have powers to make general inquiries e.g. into discrimination in certain sectors; and to conduct investigations where it suspects that someone has been discriminating against the law. These powers are intended for strategic use and can already be used by the existing Commissions.
- 7.2 The Commission for Equality and Human Rights is intended to start its work in October 2007.
- 7.3 Communities and Local Government will monitor the activities of the Commission for Equality and Human Rights and DTI will monitor labour market data and employment tribunal costs. DWP will monitor impacts in relation to disabled people. The Department for Constitutional Affairs will monitor information on discrimination cases.

## 8. Contact

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## Annex A: Cases of discrimination at employment tribunals

1. In 2005/06, just over 86,000 claims were registered with the Employment Tribunals Service.<sup>59</sup> Any claim may be registered with the Service under one or more jurisdiction, or subsequently amended or clarified in the course of proceedings – but it will be counted only once. In 2004/05, nearly 29,000 complaints of discrimination were made, and around 41,000 in 2005/06.

**Table 14: Discrimination complaints registered with the Employment Tribunals Service**

2000/01	2001/02	2002/03	2003/04	2004/05	2005/06
51,961	33,627	25,002	31,412	28,870	41,087

Source ETS Annual Reports.

2. The issues raised in this Regulatory Impact Assessment are intended to affect the discrimination aspect of a claim only. It is therefore appropriate to consider only those cases that are brought before tribunals where discrimination is the only or main complaint. These are detailed below.

**Table 15: Cases where discrimination is registered as the main jurisdictional complaint**

Discrimination	1998/99	1999/0	2000/01	2001/02	2002/03	2003/04	Average
Sex	6203	4926	17200	10,092	8,128	14,284	10,139
Race	2746	3246	3429	3,183	3,039	2,830	3,079
Equal Pay	5018	2391	6586	5,314	3,077	4,159	4,424
Disability	1430	1743	2100	2,624	2,716	2,764	2,230
Total	<b>15,397</b>	<b>12,306</b>	<b>29,315</b>	<b>21,213</b>	<b>16,960</b>	<b>24,037</b>	<b>19,871</b>
As proportion of total discrimination complaints	*	*	56%	63%	68%	77%	66%

Source: ETS Annual Reports. \*Only the main jurisdiction was recorded. No data for 2004/05 or 2005/06.

3. On average, in **two thirds** of claims where there is a discrimination complaint, it was the main complaint.

<sup>59</sup> ETS Annual Report 2005/06.

[http://www.employmenttribunals.gov.uk/publications/annual\\_reports/ETSAR05-06.pdf](http://www.employmenttribunals.gov.uk/publications/annual_reports/ETSAR05-06.pdf)

## Cost of employment tribunal case – discrimination

4. Using data from the Survey of Employment Tribunals' Applications 2003, the DTI estimates that the average cost of an employment tribunal case (under any jurisdiction) is around £4,900 for the employer, and £910 for the taxpayer.<sup>60</sup> These costs include time spent on the case by members of staff, and the cost of advice and representation. These estimates also include amounts awarded if the claimant is successful.
5. The SETA data also explore the cost of an employment tribunal case by jurisdiction. The total cost, excluding any awards, *when discrimination is the main jurisdiction* is £4,746 to the employer, including total spent on advice and representation and time spent by staff including managers. This is higher than the average for all jurisdictions (£3,277), confirming that discrimination cases are more expensive than most other jurisdictions, as they tend to be longer and more complex.
6. The average total financial cost to a claimant (excluding lost earnings) in a discrimination case was £1,171, compared with £484 for all claims.

## Discrimination in the workplace

7. Not all employment disputes go to tribunals. To work out the population of 'justiciable employment disputes' in discrimination (i.e. events that could give rise to litigation) we assume that approximately 12-16% of justiciable employment disputes result in an employment tribunal claim.<sup>61</sup> Using this assumption, Table 16 estimates the incidence of discrimination disputes.

<sup>60</sup> DTI Employment Relations Research Series No.33: 'Findings from the Survey of Employment Tribunal Applications 2003'.  
<http://www.dti.gov.uk/files/file11455.pdf?pubpdfload=04%2F1071>

<sup>61</sup> Based on the Legal Services Research Centre (LSRC) Periodic Survey, first findings published 2003, it is estimated that 2.94 million serious employment problems, which might have involved recourse to law, occurred in the three-and-a-half years from January 1998. Over this period, there were about 374,000 employment tribunal claims. Over this period, that equates to about 12.7% of disputes going to tribunal. Genn, *Paths to Justice*, 1998, suggests about 14.6% of disputes going to tribunal over the period 1992-7. Given these uncertainties, the current proportion of disputes going to tribunal is taken to be 12-16%.

**Table 16: Estimated number of discrimination justiciable events**

	<b>low</b>	<b>high</b>
Sex	63,000	84,000
Race	19,000	26,000
Equal Pay	28,000	37,000
Disability	14,000	19,000
<b>Total</b>	<b>124,000</b>	<b>166,000</b>
Note: Based on average number of cases registered where discrimination is main jurisdiction (Table 15), assuming that 12-16% of justiciable events lead to an ET case. Rounded to 3 significant figures		

## **Annex B: Cases of discrimination at county courts**

1. There are around 220 county courts in England and Wales and around 50 sheriff courts in Scotland.
2. At the moment, data on the number and nature of court cases of discrimination involving provision of goods, facilities or services are limited. However, anecdotal evidence suggests that there are few such cases. The number of court cases each year is estimated below.

### ***Race discrimination***

3. In 2004, the Commission for Racial Equality (CRE) received 258 applications for assistance in areas outside employment.<sup>62</sup> We take this to mean broadly the provision of goods, facilities and services. In the majority of cases, the CRE assistance will be in the form of advice and some legal assistance, but it is unlikely that all these applications will actually get to court. Anecdotal evidence suggests that the large majority of such cases will be resolved or withdrawn before getting to court.
4. If we assume that 10-15% of applications for assistance go to court, this gives an estimated number of race discrimination cases of 26-39 per annum.

### ***Gender discrimination***

5. In 2004 and 2005, the Equal Opportunities Commission (EOC) received an average of 175 calls to their helpline about discrimination in the provision of goods, facilities or services. It is likely that only a very small proportion of these calls will result in a claim actually going to court. It is very likely that it will be a smaller proportion than that for applications to the CRE, which are likely to be at a more developed stage where claimants are perhaps more determined to take forward their case than those making a telephone call to a helpline.
6. Therefore, if we assume that 2-5% of these calls end in cases being brought to court, this gives an estimated 4-9 gender discrimination cases in the county court each year.

### ***Disability discrimination***

7. Research conducted by Income Data Services on the operation of the Disability Discrimination Act 1995 found that, compared with the number of employment cases brought before tribunals, the number involving

<sup>62</sup> CRE Annual Report 2004.  
<http://www.cre.gov.uk/downloads/AR04main.pdf>

the provision of goods, facilities, services and premises brought before courts is very small: approximately 50 cases in the first four years of the Act's operation, compared with thousands of employment tribunal claims.<sup>63</sup> Therefore, we assume an annual volume of 10-20 disability discrimination cases.

### *Religion or belief*

8. The number of cases in employment tribunals is very small in this jurisdiction. In the first year of operation of the relevant regulations (2003/2004), 70 cases were accepted by the Employment Tribunals Service. In 2004/05 there were 307.
9. Therefore it is very likely that only a small number of cases will be brought to court in this jurisdiction. If we assume that 2-5% of the number of discrimination cases in employment in 2004/05 is a good estimate of the expected number of court cases in the provision of goods, facilities or services, we could expect around 6-15 cases per annum.

### *Sexual Orientation*

10. Similarly, there have been very few tribunal cases in this equality strand; 61 in 2003/04 and 349 in 2004/05.
11. Therefore it is very likely that only a small number of cases will be brought to court in this jurisdiction. If we assume that 2-5% of the number of discrimination cases in employment in 2004/05 is a good estimate of the expected number of court cases in the provision of GFS, we could expect around 6-15 cases per annum.

### *Age*

12. This Regulatory Impact Assessment also considers proposals to protect those suffering discrimination on the grounds of age in the provision of goods, facilities and services. Although there is currently no legislation in this area, from October 2006 it will be unlawful to discriminate on the grounds of age in employment. The final Regulatory Impact Assessment for the relevant Age (Employment) Regulations estimated that an additional 8,000 employment tribunal cases would result from the new requirements.<sup>64</sup> If we assume that 2-5% of the estimated number of discrimination cases in employment is a good estimate of the expected number of court cases in the provision of goods, facilities or services, we could expect around 160-400 cases per annum.

<sup>63</sup> <http://www.dti.gov.uk/files/file26518.pdf>

<sup>64</sup> <http://www.dti.gov.uk/files/file26518.pdf>

13. These estimates are summarised below.

<b>Table 17: Estimated number of county court cases involving discrimination in provision of goods, facilities or services, per annum</b>		
	<b>low range</b>	<b>high range</b>
Race*	26	39
Gender**	4	9
Disability	10	20
Religion or belief	6	15
Sexual Orientation	7	17
Age***	160	400
Total	212	500
<p>* 258 Applications for assistance to CRE in 2004, in areas not related to employment. Assume 10-15% go to court.</p> <p>** EOC received 175 calls, assume 2-5% go to court.</p> <p>*** Forecast when/if legislation brought into force.</p>		

14. The number of discrimination cases heard by county courts is very small. In 2004, there were approximately 3080 court cases under the category 'other', under which discrimination claims are registered.<sup>65</sup> Therefore the estimated total number of discrimination claims in Table 17 forms approximately 16% of the total claims in the 'other' category in 2004. As a proportion of total claims before county courts in 2004 (14,670), discrimination cases comprise around 1-3%.

### Costs of a case in county court.

15. According to data from Her Majesty's Courts Service (HMCS), in 2005/06 the average day spent in the county court cost an approximately £1,011.<sup>66</sup> The average time spent hearing a case in the county court in 2004 was 5 hours, 25 minutes.<sup>67</sup> If we take this to equate to roughly one full day in court, the total aggregate costs of the cases described in Table 17 range from £215,000-£506,000. Each hourly reduction of the hearing of a discrimination case in county court will be £187. To illustrate potential

<sup>65</sup> Judicial Statistics, Annual Report, DCA. 2004 report:  
<http://www.official-documents.co.uk/document/cm65/6565/6565.pdf>

<sup>66</sup> Total judicial costs for 2005/06 divided by total sitting days in court. These costs exclude administration costs. Including admin costs, daily court costs are estimated at £2,844.

<sup>67</sup> Judicial Statistics 2004, Table 4.15. Average length of hearing in 'other' case of which discrimination claims are a part.  
<http://www.official-documents.co.uk/document/cm65/6565/6565.pdf>

aggregate savings, a reduction of just one hour in each discrimination case could lead to savings in the region of £40,000-£94,000.

16. These costs do not include the cost paid for advice and representation by claimants or business, but reflect the judicial cost of one day sitting in court. Such fees are payable when commencing proceedings and may be incurred by claimants or the taxpayer (some people are exempt, e.g. those on low income). Ultimately, court costs will usually be paid by those against whom the judgment is made.
17. According to unpublished data from the HMCS, in 2004 the median amount awarded to claimants in the 'other' category in a two-month sample period was £5,856. In 2005 the median award was £10,349. The average median compensation in 'other' cases for these two years is therefore around £8,100. Furthermore, the average success rate (e.g. the number of cases where monetary award was paid) of those cases in the sample periods was 38%. Assuming that 38% of cases described in Table 17 are successful, the estimated aggregate amount paid in compensation in each discrimination category is estimated below.

**Table 18: Total estimated monetary award, by type of discrimination**

	<b>low range £</b>	<b>high range £</b>
<b>Race</b>	80,000	120,000
<b>Gender</b>	10,000	30,000
<b>Disability</b>	30,000	60,000
Religion or belief	20,000	50,000
Sexual Orientation	20,000	50,000
Age	490,000	1,230,000
<b>Total</b>	<b>650,000</b>	<b>1,540,000</b>

Source: Unpublished data from HMCS. Annual total, based on median award £8102.5, and 38% of claims are successful

## Illustration of potential costs arising from increase of discrimination claims in the county and sheriff courts

### Discrimination claims before courts, concerning the provision of goods, facilities and services

18. We estimate that there are currently approximately 40-70 discrimination cases in the county court per year, and that this figure will increase to approximately 50 to 100 cases following introduction of provisions prohibiting discrimination in the provision of goods, facilities and services on the grounds of sexual orientation and religion or belief. Furthermore, we estimate that introducing legislation to prevent discrimination in the provision of goods, facilities and services on the grounds of age, would result in an additional 160-400 cases per annum. Data from HMCS suggest that the judicial<sup>68</sup> costs of a court case are approximately £1011. Therefore it is estimated that the increase in costs, if a decision were taken to prohibit age discrimination in the provisions of goods and services, would be between £162,000 and £404,000
  
19. As illustrated in Table 17, the estimated total number of goods, facilities and services cases across all strands (including age discrimination), is 212-500 cases per annum. The cost to the courts of this number of cases is between £214,000 and £506,000.
  
20. Our proposals for enhancing discrimination expertise in the courts may encourage more individuals to bring cases, as confidence in the system should increase. The costs to the court of a 1%, 2% and 5% increase in cases are illustrated below, based on the above estimate of approximately 212-500 cases per year.

<b>Table 19: Judicial costs of additional goods, facilities and services cases brought before court</b>		
	<b>Low range (212 cases p. annum)</b>	<b>High range (500 cases per annum)</b>
<b>Percentage increase in claims</b>		
1%	£2,000	£5,000
2%	£4,000	£10,000
5%	£11,000	£25,000

<sup>68</sup> These costs ultimately fall to whomever the judgement is against, some are picked up by taxpayer.

21. We also need to estimate the costs incurred by those attending the additional cases, in terms of advice, representation and time spent on the case. At the moment, these data are very limited. For the time being, we assume that they are the same as for employment tribunal claims. Using data from the Survey of Employment Tribunal Associations 2003, the DTI estimates that the average cost of an employment tribunal case (under any jurisdiction) is around £4,900 for the employer<sup>69</sup>, £1171 for a claimant<sup>70</sup> and £910 for the taxpayer<sup>71</sup>. Going by this assumption, the additional costs for employers and claimants are approximately £150,000 under the 'high-risk' scenario (e.g. 500 goods, facilities and services cases per annum, rising by 5%).<sup>72</sup> Based on these calculations, the upper-bound estimate of the impact of increased goods, facilities and services cases (an increase of 5%) should be approximately £175,000 (including £23,000 judicial costs to the taxpayer).

**Table 20: Upper-bound estimate of cost of increase in goods, facilities and services cases\***

Employers	£123,000
Claimants	£29,000
Taxpayer	£23,000
Total	£175,000
*500 cases per year, increase by 5%	

<sup>69</sup> This includes advice and representation and time spent on the case by staff and senior managers.

<sup>70</sup> Total financial cost including that paid for advice and representation, travel and communication, excluding loss of earnings.

<sup>71</sup> Costs to Acas and Employment Tribunals Service. DTI Employment Relations Research series No.33: "Findings from the Survey of Employment Tribunal Applications 2003".

<sup>72</sup> Total costs in this scenario as follows: service providers/defendants: £123,000; claimants £29,000.

**Table 21: Illustrative costs associated with 1, 2 and 5 per cent increase in discrimination cases at employment tribunals\***

	Employer			Taxpayer			Claimants		
	1%	2%	5%	1%	2%	5%	1%	2%	5%
Percentage increase in claims**									
Sex	£481,197	£962,394	£2,405,985	£92,265	£184,530	£461,325	£118,728	£237,455	£593,638
Race	£146,129	£292,259	£730,647	£28,019	£56,038	£140,095	£36,055	£72,110	£180,275
Equal Pay	£209,963	£419,926	£1,049,815	£40,258	£80,517	£201,292	£51,805	£103,610	£259,025
Disability	£105,836	£211,672	£529,179	£20,293	£40,586	£101,456	£26,113	£52,227	£130,567
<b>Total</b>	<b>£943,125</b>	<b>£1,886,250</b>	<b>£4,715,626</b>	<b>£180,835</b>	<b>£361,670</b>	<b>£904,670</b>	<b>£232,701</b>	<b>£465,402</b>	<b>£1,163,506</b>

\* Based on assumption that costs are: £4746 for employers, £910 for Taxpayer and £1171 for claimants, from SETA 2003.

\*\* Based on average number of cases per annum, from ETS Annual Reports 1998/99-2003/04 (see Table 15, Annex A).

# **Annex C: Initial Regulatory Impact Assessment (RIA): Implementation of the EU Gender Directive on Goods and Services**

## **Title of proposal**

1. Regulations to implement Directive 2004/113/EC ('the Gender Directive') – equal treatment between men and women in the access to and supply of goods and services.

## **Purpose and intended effect of measure**

### *Objectives*

2. Implement the EU Gender Directive by:
  - amending the Sex Discrimination Act 1975 (SDA) as follows:
    - a) amend the current definition of indirect discrimination in the field of goods, facilities and services;
    - b) introduce an explicit prohibition on harassment and sexual harassment in the field of goods, facilities and services;
    - c) apply the same burden of proof provision to goods, facilities and services as exists for employment and vocational training;
    - d) where necessary, amend the current exceptions in the SDA to ensure they are compatible with the Directive;
    - e) extend protection against discrimination on grounds of gender reassignment to goods, facilities and services.
    - f) clarify that discrimination on grounds of pregnancy and maternity is unlawful in the field of goods, facilities and services.
    - g) specify the circumstances under which the use of sex as an actuarial factor in the calculation of premiums and benefits for insurance and other financial products can result in different treatment for men and women.
  - bringing regulations under the European Communities Act 1972 into effect in time to meet the implementation deadline of 21 December 2007. The proposals extend to England, Scotland and Wales only.

## Background

3. The Gender Directive implements the principle of equal treatment between men and women in the access to and supply of goods and services across all EU member states. The Directive must be implemented by Member States by 21 December 2007.
4. It has been unlawful to discriminate between men and women in the provision of goods, facilities and services since 1975 and the SDA already largely complies with the Gender Directive. There are only limited data on the number and nature of such discrimination cases that are brought before the courts. In 2004 and 2005, the Equal Opportunities Commission (EOC) received an average of 175 calls per year to their helpline about discrimination in the supply of goods, facilities and services relating to gender and gender reassignment. It is likely that only a very small proportion of these calls would have resulted in a claim actually going to court. Assuming that 2%-5% of calls result in a court case, we estimate there are 4-9 gender and gender reassignment discrimination cases in the county court each year.
5. We do not consider that the changes proposed will lead to a major increase in cases.
6. The SDA currently contains inconsistencies arising from changes when implementing previous European Directives on employment matters. Many will be removed when the Gender Directive is implemented. There will also be greater consistency between the SDA and the other “strands” of discrimination law, such as those covering race and religion or belief.
7. Regulations under Section 2(2) of the European Communities Act 1972 will amend the SDA in areas covered by or related to the Directive. But changes under the regulations will not extend to education in schools or the content of the media and advertisements because the Directive explicitly excludes these matters from its scope.
8. A Joint EU Council and Commission statement<sup>73</sup> linked to the Directive highlights the European Court of Justice ruling<sup>74</sup> that the right not to be discriminated against on grounds of sex includes discrimination arising from gender reassignment. The Government considers that the Gender Directive therefore makes it unlawful to discriminate on grounds of gender reassignment as well as on grounds of sex, as is already the case in employment and vocational training.

<sup>73</sup> Contained in Addendum to draft minutes of 2630th Meeting of the Council of the European Union on 13.12.2004 Reference 16273/04 Add1

<sup>74</sup> C-13/94 *P v S and Cornwall County Council*.

## Rationale for government intervention

9. The proposed amendments to the SDA are necessary to ensure compliance with the Gender Directive. The deadline for implementation is 21 December 2007. A Single Equality Bill could not come into force until after this deadline. Therefore, to meet our Community obligations, we are implementing the Directive through regulations.

## Consultation

### Within government

10. The consultation document and Regulatory Impact Assessment have been developed by the Women and Equality Unit in Communities and Local Government in consultation with a wide range of government departments including Health, Education and Skills, Trade and Industry, Work and Pensions, Justice, Culture, Media and Sports, Transport, HM Treasury, the Scottish Executive, the Welsh Assembly and the Better Regulation Executive in the Cabinet Office.

### Public consultation

11. This partial Regulatory Impact Assessment forms part of the consultation on our proposals to amend the Sex Discrimination Act through the regulations. The draft regulations can themselves be viewed alongside the web publication of this consultation at [www.communities.gov.uk](http://www.communities.gov.uk) and [www.womenandequalityunit.gov.uk](http://www.womenandequalityunit.gov.uk) and comments are welcome on them as well as on the Regulatory Impact Assessment. The estimates in this Regulatory Impact Assessment will be considered in the light of responses to the consultation.

## Options and their costs and benefits

12. We have analysed each element of the SDA relating to goods and services against the Directive's requirements and, bearing in mind better regulation principles, we have assessed whether we should:
  - leave the SDA unchanged because it is compatible with and satisfies the requirements of the Gender Directive;
  - amend the SDA in order to comply with the Directive;
  - repeal provisions of the SDA that do not comply with the Directive.

## Sectors and groups affected

13. The Directive affects providers of goods, facilities and services in the public and private sectors as well as members of the public who are customers for goods and services or who make use of public or private sector facilities.
14. Organisations already have responsibilities under the SDA and its associated case law in the areas covered by the Directive. They will benefit from the greater consistency achieved by many of the changes proposed to the SDA. This will make it easier for organisations to understand their obligations as employers and service providers.
15. Existing protections for pregnant or new mothers will be clarified by introducing an explicit protection from discrimination on grounds of pregnancy and maternity in the supply of goods, facilities and services.
16. The regulations will particularly benefit transsexual people, who will gain protection from direct discrimination in the supply of goods, facilities and services.

## Costs and benefits of detailed proposals

### *(a) Amend the definition of indirect discrimination*

17. In broad terms, indirect sex discrimination occurs when the same policy or practice is applied to both men and women but in practice it particularly disadvantages one sex. The SDA currently contains two different definitions of indirect discrimination: one derives from EU law and applies to employment and vocational training; the other (the original definition) applies in all other fields covered by the SDA. The latter is narrower, relies heavily on the use of statistical evidence to prove that indirect discrimination has occurred, and does not meet the Gender Directive's requirements.

### **Option 1 (recommended): amend the Sex Discrimination Act definition, using the formulation which currently applies to employment and vocational training.**

## Benefits

18. This would provide a single, consistent definition of indirect discrimination within the SDA and greater consistency of that Act and other equality legislation. This will reduce confusion for service providers (especially those who are also employers) and users.

## Costs

19. Schools in their roles as employers and providers of educational services will not benefit from this simplification, because the Gender Directive does not apply to education in schools.

### **Option 2: do nothing.**

This is not a viable option as it would not comply with the Gender Directive.

## Benefits

20. None identified.

## Costs

21. If the definition of indirect discrimination is not amended, the UK would be in breach of its EU obligations.

### ***(b) Harassment and sexual harassment***

22. EU law deems that harassment on grounds of sex and sexual harassment are forms of sex discrimination. Since 2005, the SDA has explicitly prohibited harassment on grounds of sex and sexual harassment in employment and vocational training, in order to meet EU law
23. Before the 2005 change was made, UK courts had been able to interpret the SDA in a way that provided a degree of protection against sexual harassment, so the concept is not new. But this approach is no longer sufficient to comply with the Gender Directive as regards harassment in the supply of goods and services and premises.

**Option 1 (recommended): amend the Sex Discrimination Act so that harassment on grounds of sex and sexual harassment are explicitly prohibited in the supply of goods, facilities and services and the disposal or management of premises, as is already the case in employment and vocational training.**

## Benefits

24. Provides greater legal clarity and greater consistency of protection both within the SDA and with other strands of equality legislation. Reduces risks of confusion as to where the harassment provisions apply.

## Costs

25. It is likely (though not absolutely certain) that the courts would already interpret the SDA as outlawing harassment on grounds of sex and sexual harassment in the supply of goods, facilities and services, so making this explicit on the face of the legislation should not impose any substantial additional costs on business.

## **Option 2: do nothing.**

### Benefits

26. None identified.

### Costs

27. Individuals would not be protected from harassment and the UK would be in breach of its EU obligations. Both outcomes would be costly to the Government and the taxpayer.

### *(c) Burden of proof*

28. It is often difficult for someone to prove that he or she has been discriminated against because he/she does not have access to the range of facts underlying the alleged act of discrimination. The SDA was amended in 2001 to provide that once an employee has established facts that constitute a prima facie case of discrimination, it is then for the employer to prove that the employer's action was not discriminatory. This amendment implemented the Burden of Proof Directive but covered only employment and vocational training.
29. The Gender Directive applies the same burden of proof to discrimination cases in the field of goods, facilities and services.

## **Option 1 (recommended): extend the Sex Discrimination Act's burden of proof provision to the supply of goods, facilities and services.**

### Benefits

30. Individuals who have been subject to unlawful sex discrimination in the supply of goods and services may be better able to prove their case. The law will be easier to understand because there would be greater consistency within the SDA as well as with other equality legislation. Generally speaking, the county and sheriff courts already apply the proposed approach in discrimination cases, and the amendment will put this beyond doubt.

## Costs

31. As the change will be in tune with existing practice, there are no specific new obligations on either the courts or service providers.

## Option 2: do nothing

This is not a viable option as it would not comply with the Gender Directive.

## Benefits

32. None identified.

## Costs

33. Individuals would have greater difficulty asserting their rights and the UK would be in breach of its EU obligations.

## *(d) Exceptions from the principle of equal treatment*

34. The SDA contains a number of exceptions from the principle of equal treatment which apply in the supply of goods, facilities and services. The Gender Directive allows differences in treatment on the basis of a justification test:

“...if the provision of the goods and services exclusively or primarily to members of one sex is justified by a legitimate aim and the means of achieving that aim are appropriate and necessary”.

35. The Government negotiated this provision to ensure that we could retain certain specific exceptions in the SDA which allow different treatment for men and women. For example, current exceptions allow different treatment for reasons of privacy and decency, or for voluntary bodies that choose to promote the interests of one sex only, or for the organisation of single-sex sports events.

**Option 1 (recommended): where necessary, amend the existing specific exceptions in the Sex Discrimination Act, to make clear that if challenged, a service provider would need to justify difference of treatment, to ensure compatibility with the Directive**

## Benefits

36. Retaining the current approach of specifying exceptions, i.e. the conditions and circumstances where different treatment is lawful, will be generally understood by service providers as it has been in place since 1975. We have identified each of the current SDA exceptions that already complies with the Gender Directive's justification test and those which should be amended so that it is explicitly necessary to justify the difference of treatment. The Option 1 approach reduces the potential impact of changes to the SDA and any associated familiarisation costs.

## Costs

37. The requirement to justify difference of treatment will only apply to organisations that restrict access according to sex, or supply their services in a different way for men and for women. Such organisations will need to consider whether they can justify their current arrangements as being a proportionate means of meeting a legitimate aim, and if not, they may need to review their practices. There is a very low risk that some service providers may be challenged about practices they are unable to justify.

### **Option 2: repeal all existing specific exceptions and replace with a general 'genuine service requirement' test.**

38. A "genuine service requirement" test would be a general test where service providers would have to justify that any service they provide exclusively or primarily to one sex is in order to achieve a legitimate aim, and is a proportionate means of achieving that aim.

## Benefits

39. While this approach could offer some flexibility in how services are provided for men and for women, we see little benefit at this stage of a complete overhaul of the existing SDA approach, where narrowly defined exceptions are generally well understood. However, we are seeking views on the desirability of a "genuine service requirement" test covering all equality "strands" as part of the Discrimination Law Review's wider consultation.

## Costs

40. A genuine service requirement test would introduce uncertainty where legal clarity currently exists. It would impose an unnecessary cost for service providers to familiarise themselves with a new legislative approach, when the current approach is clearly understood and works well. We have not identified a need for any exceptions in areas other than those where difference of treatment is already lawful under the SDA.

*(e) Discrimination on grounds of gender reassignment*

**Option 1: prohibit discrimination on grounds of gender reassignment in the provision of goods, facilities and services, unless justifiable in limited circumstances e.g. in relation to single sex services, sport, and religious doctrine.**

**Benefits**

41. Arbitrary discrimination against transsexual people is wrong. Extending protection in this way will provide recurring benefits for transsexual people who will have better access to goods, facilities and services and greater opportunity to challenge discrimination. Given the small number of transsexual people (around 5,000 in the UK) the knock-on economic benefits will be small. But there may be some benefits for business in tackling discrimination – and the fear of discrimination – amongst this group of potential customers.
42. The Directive allows different treatment if it can be justified. Providing a small number of limited exceptions will ensure that the law is workable and balances the needs and rights of all service providers and users. For example, there are some circumstances where organisations that provide services or activities on a single-sex basis may need to treat some transsexual people differently from other men or women. We propose that this should be lawful if the provider can show that the way the service is provided to a transsexual person is justified by being a proportionate means of meeting a legitimate aim.

**Costs**

43. Given the small number of transsexual people (around 5,000 in the UK), the costs to business will be small.
44. There may be a small resource impact on the county courts, once transsexual people can bring claims of discrimination against service providers. This is also likely to be minimal, given the small number of transsexual people.
45. We expect very few businesses will need to change their existing practices or policies in order to comply with the new regulations and so no costs would accrue for the majority. In any event organisations that stop refusing their services to potential customers on the grounds of gender reassignment may experience an increase rather than decrease in their business.

**Option 2: prohibit discrimination on grounds of gender reassignment in the provision of goods, facilities and services – with no exceptions.**

**Benefits**

46. None identified.

**Costs**

47. When someone is changing gender, decisions will vary according to the particular circumstances as to whether the transsexual person should have access to services in their acquired sex or their birth sex. Without the flexibility that the proposed exceptions for single-sex services would provide, there is greater likelihood that a transsexual person's dignity will be compromised and a service provider is more likely to face a discrimination claim.

***(f) Provide explicit protection against discrimination on grounds of pregnancy or maternity***

48. The Gender Directive prohibits direct discrimination on grounds of pregnancy or maternity. The SDA explicitly makes it unlawful to discriminate in employment and vocational training on grounds of pregnancy and maternity, but there is no equivalent provision in respect of goods, facilities and services.

**Option 1 (recommended): make it explicit that discrimination on grounds of pregnancy and maternity in the provision of goods, facilities and services is unlawful sex discrimination.**

**Benefits**

49. This would make it clear and certain what women's rights and service providers' responsibilities are, and ensure compliance with our EU obligations.

**Costs**

50. Even under the SDA as it stands, it is likely that if a pregnant woman or new mother experiences less favourable treatment than a man in relation to access to goods or services, this would be construed as unlawful sex discrimination. We know of few, if any circumstances where goods or service providers treat women less favourably because of their pregnancy or maternity. So for the vast majority of organisations this clarification will be cost neutral.

51. Any organisation that currently treats pregnant women or new mothers less favourably is already at risk of challenge. It is possible that women may bring more cases alleging pregnancy/maternity discrimination against service providers due to raised awareness of their rights, with potential resource implications for the courts. However, we estimate that only between 4 and 9 gender related discrimination cases are brought before the county courts each year, so the number of any additional cases is likely to be minimal.<sup>75</sup>

## **Option 2: do not amend the Sex Discrimination Act**

### **Benefits**

52. None identified.

### **Costs**

53. The UK would be in breach of its EU obligations. It would be left to the courts to interpret whether discrimination on grounds of pregnancy and maternity in the provision of goods, facilities and services was unlawful sex discrimination, and it would not be clear to service providers or women whether the law applied in the same way in this respect as in employment and vocational training.

#### **(g) Insurance**

54. The Gender Directive requires that if sex is used as an actuarial factor in calculating insurance premiums and benefits, this must not result in different premiums and benefits for men and women. It also requires that costs relating to pregnancy and maternity must not result in differences in individuals' premiums and benefits (see (ii) below).
55. However, the Directive also permits Member States to allow departures from the requirement for premiums and benefits to be uni-sex, provided that data are compiled, published and regularly updated which support using sex as an actuarial factor.

<sup>75</sup> Data on the number and nature of cases of discrimination in the provision of goods, facilities and services in the courts is limited. In 2004 and 2005, the EOC received an average of 175 calls to their helpline regarding discrimination in the provision of goods, facilities and services. It is likely that only a very small proportion of these calls would result in a claim actually going to court. If we assume that 2-5% of those calls end up being brought to court, this gives an estimated 4-9 gender discrimination cases in the county court each year.

56. The SDA currently has an exception that allows sex to be taken into account when assessing insurance risks. Moving to uni-sex premiums and benefits in all cases would restrict insurers' ability to price risks efficiently. It would disadvantage both women and men by raising premium rates overall. We therefore propose to allow departures from the uni-sex requirement, in line with the condition prescribed for supporting data (see (i) below).
57. To meet the Directive's requirements we propose three changes to the treatment of insurance in the SDA:
- (i) insurers will be required to compile, publish and update data that support sex-based differentials in insurance premiums and benefits;
  - (ii) costs relating to pregnancy and maternity must not result in differences in individuals' premiums or benefits;
  - (iii) clarification is required of the treatment of transsexual people by insurance companies, particularly people in the process of changing from one gender to another.
58. The options below consider how the Directive's requirement to publish data (item (i) above) might be met.

### **Option 1: rely on existing published data sources**

#### **Benefits**

59. This option has the lightest regulatory touch, involving no change. There are no implementation costs.

#### **Costs**

60. The public data are incomplete, widely scattered and inaccessible. Insurers rely on their own forecasting estimates and data as well as or instead of published sources. Even if the existing sources were brought together, they would be difficult for the layman to interpret. Consumers would not be clear whether or how the published sources relate to differences in premium and benefit levels. So this option does not fully meet the requirements of the Directive.

### **Option 2: mandatory record-keeping and full disclosure of underwriting data and assumptions by insurance companies, with new reporting, inspection and compliance functions for the Financial Services Authority.**

## Benefits

61. This option exceeds the minimum requirements of the Directive in terms of the volume of data to be published and extension of the role of the regulator, the Financial Services Authority (FSA).

## Costs

62. We estimate the one-off set-up costs to be £11.5m. This covers establishing integrated reporting systems by 151 insurance companies in the life, annuities, motor, health and travel sectors based on £100,000 for a large company and £50,000 for a small company. The FSA's set up costs are estimated to be £45,000.
63. Annual running costs are estimated to be £3.5m. These are composed of 100 senior manager and 150 administrator hours for a large company and 50 senior manager and 100 administrator hours for a small company, with associated overheads of 30%; (£1.8m); compliance costs (£0.2m); publication costs (£1.5m) and FSA monitoring costs (£5,000).
64. There would also be a negative impact on competition in the insurance sector. The quality of an insurer's actuarial data is one of its main competitive tools and incentives to develop and improve internal data and underwriting techniques would be reduced if some of those data had to be published. This in turn would reduce the quality of insurance provision. Although it is difficult to put an accurate figure on this, it is likely to be qualitatively and quantitatively significant.

### **Option 3 (recommended): an obligation on insurance companies to publish data based on guidelines issued by the Government**

65. It is proposed to enable insurers to publish high-level summary data either individually or collectively. To balance consistency of reporting with the flexibility to accommodate market developments and widely differing requirements for different sectors, the Government proposes to issue guidance setting out the scope, form, content, timing and manner of data publication. This will meet the minimum requirement on the Government to ensure that accurate data are compiled, published and regularly updated.

## Benefits

66. Consumers will benefit by having access to simple summaries, rather than raw data, justifying proportionate differences in premiums and benefits based on sex. This option is a lighter touch regulatory requirement than Option 2. It gives insurers discretion to publish data individually or collectively, and to adapt reports to their own circumstances based on broad reporting guidelines.

## Costs

67. We assume that almost all insurers will choose to enter into collective publication arrangements through the Association of British Insurers (ABI) or another agency. The ABI has indicated that it is prepared to enter into such arrangements and is preparing a data collection and publication scheme.
68. Much of the data collection infrastructure is already in place. Further one off set-up costs are estimated to be £720,000 representing the development of some internal reporting systems (£5,000 for a large firm and £2,000 for a small firm) together with the development of a central collection and publication system (£110,000).
69. Estimated annual running costs are £250,000. These are based on 15 senior manager and 20 administrator hours for a large company and 5 and 10 hours respectively for a small company (£235,000), including associated overheads of 30%; central staff costs (£5,000) and central publication costs (£10,000).

## Familiarisation costs

70. The time spent by goods and services providers familiarising themselves with these changes to the law will depend on their nature and size. This Regulatory Impact Assessment makes the same assumptions as those made in the overall Regulatory Impact Assessment on the Discrimination Law Review. We have assumed a unit cost for small firms based on the salary cost of a general administrator/manager. For medium and large firms our costs are based on a personnel manager. We have drawn on the Annual Survey on Hours and Earnings (ASHE) (2005) for data on wage costs and uplifted this by 30% to cover non-wage costs.
71. Assuming that 20% of small firms spend an extra hour reading and understanding guidance on discrimination legislation in this area, and all medium/large firms and public authorities spend 2 hours, then the familiarisation costs come out as:

**Table 22: Familiarisation costs of the Gender Directive**

	Time Required	Unit cost	Cost per firm	Number of firms	Total Cost (£m)
Small firms	1 hour	£27.03	£27.03	230,000 [20% of SME employers]	£6.22
Medium & large firms	2 hours	£29.00	£58.00	37,020	£2.14
Public authorities	2 hours	£29.00	£58.00	26,000	£1.61
<b>Total</b>					<b>£9.97</b>

## Monitoring and Review

72 The Equal Opportunities Commission (EOC) currently has a formal responsibility to keep the SDA under review. This can include monitoring and investigations to ascertain the position, challenging the law by supporting individuals' cases up to and including the European Court of Justice, and advising the Government where they think amendments are necessary. From October 2007 this role will be taken on by the Commission for Equality and Human Rights.

## Competition Assessment

73 We have applied the competition filter. The Gender Directive contains provisions that could impact on the insurance sector, but the recommended options for implementation avoid potential adverse impact. Concerns have also been raised by representatives of the airline industry as to how the explicit requirement not to discriminate on grounds of pregnancy and maternity would affect those airlines that currently operate a blanket ban on carrying women who are nearing their date of confinement. However, these organisations already risk challenge under the existing law and in any event, we are aware that not all airlines impose such a ban. Several choose instead to consider, on a case by case basis, all passengers whose physical condition raises issues about the desirability of flying.

## Enforcement, Sanctions and Monitoring

74. Sex discrimination legislation is, in the main, enforced by the individual. Claims are brought in the county courts (England and Wales) and the sheriff court (Scotland). Costs differ, but a successful claimant will generally recover his/her own costs. The Courts Service does not collect data about the number of SDA complaints about goods and services that are brought before the county courts but all discrimination cases brought before county courts (that is on grounds of sex, race and disability) are estimated to comprise between 1% and 3% of the total number of cases brought, and, of those, we estimate that only 1 in 7 is related to sex discrimination. While there may be a slight increase in cases as a result of these changes we do not consider that they will have a significant impact on court running costs.

## Annex D

### **Making adjustments to common parts of let residential premises – supplementary costs information**

#### **Government funding for disability-related housing adjustments**

Integrated Community Equipment Services are available through adult social services for minor adjustments up to a value of £1,000. Two funds are available for adjustments costing over £1,000, eligibility depends on tenure type. For leasehold owner occupiers and private renters, funding is provided through Disabled Facilities Grants. For Council lessees funding is provided through their Housing Revenue Accounts. Both are means tested.

It has been assumed that half of the adjustments made to common parts will cost under £1,000 and half will cost over £1,000. Therefore an estimated 14,000 common parts adjustments costing under £1,000 will be made and 14,000 costing over £1,000 will be made. This is likely to over-estimate the cost: available data on internal adjustments for disabled people show that they are more likely to be minor adjustments, e.g. 60% of people needing adjustments needed a handrail<sup>76</sup>. The estimated cost given here of funding adjustments therefore represents the maximum likely cost.

#### **Disabled Facilities Grants and Housing Revenue Account**

- Of the estimated 14,000 people making common parts adjustments costing over £1,000, we assume half will make applications to receive funding through Disabled Facilities Grants or Housing Revenue Accounts. We know from the Local Government Association that 40% of applications for Disabled Facilities Grants do not proceed. We therefore estimate up to 4,000 additional grants might be paid in the first year at an average payment of £5,700.<sup>77</sup>
- This gives a first year cost of up to £24m.
- The Survey of English Housing shows that 30% of disabled people living in unsuitable accommodation are Council lessees. A 70/30 split between budgets for Disabled Facilities Grants and Housing Revenue Accounts is therefore assumed, resulting in up to £17m additional expenditure on Disabled Facilities Grants and up to £7m additional expenditure on Housing Revenue Accounts.

<sup>76</sup> English Longitudinal Study of Ageing 1st wave 2003.

<sup>77</sup> Based on ODPM (Office of the Deputy Prime Minister) figures, updated to 2005/6 prices.

- Alternatively, as central government funding for Disabled Facilities Grants and Housing Revenue Accounts is set, no extra grants may be paid overall. Where these payments are made for common parts adjustments, other applications may not succeed or may be delayed.
- Estimated cost to budgets for Disabled Facilities Grants and Housing Revenue Accounts is from £0 to £24 million.

### **Integrated Community Equipment Services**

- As these services cover adjustments costing up to £1,000, we have assumed an average payment of £500.
- It has been assumed that half of the estimated 14,000 people making common parts adjustments costing under £1,000 will apply for an Integrated Community Equipment Service and that the same proportion as Disabled Facilities Grants proceed. This gives an estimated 4,000 potential extra grants in the first year.
- This gives a first year cost of £2m.
- Local Authorities receive an annual budget for Integrated Community Equipment Services from the Department of Health. If this budget is not increased, no extra such services may be paid. Instead, where Integrated Community Equipment Services are paid for common parts adjustments, other applications may not succeed or may be delayed.

*Estimated cost to Government of funding adjustments: from £0 to £27m*

### **Supporting People**

- It is possible that allowing people to independently leave their home, possibly for the first time in years, may result in a short-term need for support with things like shopping, which they may not be used to doing. The Supporting People Scheme of Communities and Local Government provides such support.
- This option is expected to have a negligible effect on the Supporting People Scheme. Many of the people affected, even those in the 'prisoners in their own home' category, will still have left home and accessed activities such as shopping. Some may not have done so very often, but most would have been able to get out at least sometimes, while depending on someone else to do so. It would be expected that those who previously went shopping with someone else there, would be able to phase out this source of support until they were confident enough to go alone.

## Housing Benefit

- The costs to the person installing the adjustment will not be paid for through their rent or service charges and therefore will not be eligible for Housing Benefit. The intention of the legislation would be that this would be financed by the person requesting the adjustments and would remain separate from rent or service charges and would therefore not be eligible for Housing Benefit.